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CONVEYANCER'S NOTEBOOK.

Land Registry—office copies.—We have received the following notice from the Land Registry :—

"H. M. LAND REGISTRY.

Office Copies of Documents.

The Chief Land Registrar calls attention to the fact that in a very large proportion of applications for office copies of registers and other documents the fees do not accompany the applications, and he therefore desires to notify solicitors that in view of the heavy cost of collecting the small amounts involved he may be unable to continue to issue office copies at the specially reduced rates unless the fees accompany the applications. The full schedule of specially reduced charges is printed on the convenient form of application for office copies A.44 (obtainable from H.M. Stationery Office, Kingsway, W.C.2). These fees may be paid by adhesive Land Registry stamps, the use of which assists the Registry.

The Chief Land Registrar further desires to point out that owing to the present heavy demand on the part of the fighting services for certain photographic materials the supply to the Land Registry has recently been curtailed to a considerable extent. Solicitors are therefore urged not to apply at present for office copies if they can conveniently adopt other means of satisfying their needs."

It is, perhaps, a pity that the Chief Registrar has to make an appeal to the profession not to apply for office copies. Usually the *necessity* can be met by an ordinary copy of the Land Certificate, if it is not deposited in the Registry, or in the case of documents deposited at the Registry from the copy or draft retained by the solicitors. The great advantage of the office copy is that it saves inspection, which in these days of shortage of staff is a particular help to the profession.

Land charges—official searches.—We have received the following notice from the Land Registry concerning official searches, relating to land *not* registered under the Land Registration Act :—

"The Chief Land Registrar announces that owing to the heavy increase in the number of applications for official searches now being received in the Land Charges Department, it appears probable that with the approach of the June quarter day the number of applications will be so large as to cause a delay, possibly of several days, in the issue of certificates.

Solicitors are reminded that under section 4 (2) of the Law of Property (Amendment) Act, 1926, as varied by Rule 1 (2) of the Land Charges Rules, 1940, a purchaser who has obtained a certificate of official search is entitled to protection against any entry which is made in the Land Charges Register after the date of the certificate and before the completion of the purchase, and is not made pursuant to a priority notice registered before the certificate is issued, if the purchase is completed before the expiration of fourteen days after the date of the certificate.

To avoid the inconvenience of having to postpone completions solicitors are urged to take advantage of the above provision by forwarding their application at least seven days before the date fixed for completion."

Reorganisation of parishes.—War damage and contemplated planning of areas has given rise to a Measure for the reorganisation of parishes which, if it is put into operation seriously, may have considerable effect on the rights of patrons of livings and the ecclesiastical property generally. This Measure (Reorganisation Areas Measure, 1944) has fifty-seven sections and only its general tenor can be mentioned in this place.

The reorganisation can only be made if either (i) a church has been so damaged that it is impracticable or inexpedient to repair it; (ii) the number or situation of the population is likely to be changed so materially as to affect pastoral supervision by reason of (a) causes attributable to the war, or (b) as the result of planning or replanning schemes; or (iii) a parish is contiguous or adjacent to an area so affected. An order for reorganisation is made by the Ecclesiastical Commissioners after notice to the patron, incumbent and parochial church council and rural dean. Representations in writing in opposition can be made by these parties. This order, called an Ecclesiastical Reorganisation Area order, may apply to a single parish or a group of parishes.

Once an ecclesiastical reorganisation area order has been made the Diocesan Reorganisation Committee may consider proposals for a reorganisation scheme which may take one or more of the following forms : (a) formation, whether by union or otherwise, of new benefices or parishes; (b) dissolution or alteration of existing benefices or parishes; (c) endowment and staffing of benefices within the area; (d) demolition or disposal of churches, parsonage houses, and other buildings belonging to benefices or parishes; (e) restoration or pro-

vision of churches, parsonage houses, schools or other buildings (Measure, section 4).

The procedure for making such a scheme is too complicated to detail here, but there are several safeguards to protect objection from the patron, the incumbent, the parochial church council, and the rural dean. The scheme ultimately has to be made or confirmed by the Ecclesiastical Commissioners, and if objections are persisted in and cannot be met by the Reorganisation Committee, there will be a hearing by the Special Committee (which is a body apparently to be nominated by the Church Assembly together with a chairman and vice-chairman nominated by the Archbishop of the province). This hearing will result in a report to the Ecclesiastical Commissioners who, in any case, have the last word.

If the order for reorganisation is made the provisions of the Measure make it clear that it may have devastating effect: section 10. An existing benefice may be vacated and cease to exist, either by incorporation as a whole in the area of a new benefice, or by being split up into several parts each one of which becomes, or is incorporated into, new benefices. In such a case the incumbent must receive a licence to officiate in the diocese so long as he resides there: section 10 (2). But he *may* cease to hold any benefice, when he will become entitled to compensation in the form of an annuity, which, however, may be varied by later circumstances: section 15.

Patrons do not seem to have been treated with quite the same legal strictness. The scheme must provide for patrons for new benefices, but where a patron's benefice ceases to exist "regard shall be had to the interests of the patron or patrons": section 12 (2). The right of patronage of a new benefice will be incapable of sale: section 12 (4). On the other hand the scheme is expressly authorised to include arrangements for surrender, exchange or transfer of patronage rights: section 13; and the Benefices (Transfer of Rights of Patronage) Measure, 1930, is modified to meet this: section 14.

Endowments may be vested in the Ecclesiastical Commissioners under the scheme: section 16. The scheme specifies the property and the order vests the property without any conveyance: section 16 (3). This is a different matter from the trusteeship and administration of certain church and parochial trusts. These are dealt with by Schedule II: section 27. Except in the case of a union of parishes where the incumbent and churchwardens of the united parishes take the place of any parish united, the provisions practically amount to a requirement that for any trusts held for charitable purposes it will be necessary to get an order of the Charity Commissioners or the Board of Education or in any other case the reorganisation scheme must provide: paragraph 1. Where, however, the fund is for the repair of fabric, etc., or the payment of a clergyman's remuneration then it may be applied similarly in connection with some other church or churches in the diocese: paragraph 2. Property vested in a parochial church council, which ceases to exist, automatically vests in the parochial church council of the parish in which the site of the former church exists: paragraph 3. On a division of parishes this means that the whole of such property, if any, will go to the parish which contains the site of the old church

and on any application of such property or its income the decision of the bishop is final.

Endowments for curacy including a house are dealt with specifically: section 18. The property may be vested by an order of the Ecclesiastical Commissioners and they hold freed from existing trusts, though there are directions for its use.

The vesting of property in the incumbent of the new parish is provided for by section 19.

Under a reorganisation scheme there are some complicated provisions for the removal of human remains and urns and the disposal of monuments and memorials: section 21 and Schedule I; but a churchyard or burial ground may not be sold, let, exchanged or appropriated under the Act save that it may be transferred to a borough, district or parish council as an open space: section 22.

There are numerous subsidiary provisions, including those governing war damage claims: section 34, which would make this note too lengthy for our present purpose.

It is obvious that in the probable event of diocesan reorganisation committees making serious proposals a good deal of property will in fact be affected by these reorganisation schemes. What is more, some part of the property will probably be sold. Hence this automatic transfer provided by the Measure will require some attention and, presumably, the reorganisation scheme will become a document of title. We did not notice any provisions for evidence of it for this purpose.

Salvage of old papers, books, etc.—We have received the following letter from the Ministry of Supply:—

"During the war appeals have been made to solicitors to turn out for salvage any old papers which need no longer be retained in the interests of their clients, and many solicitors have responded well.

The collections of waste paper have, however, recently fallen below the quantity required for essential purposes and it is accordingly necessary to take every possible step to fill the gap. I need hardly say that waste paper is repulped into paper and board, which are essential raw materials for the manufacture and packing of munitions of many kinds and also for civilian needs.

I appeal therefore to every solicitor to turn out for salvage all old documents and papers of every kind, including books and magazines, which have served their original purpose and are unlikely to be required again. Solicitors will know from experience which should be retained and which can be disposed of with reasonable safety.

It is recognised that the sorting out of papers may be a difficult task, especially with the shortage of staff, but all who undertake it (during the hours of firewatching or otherwise) will have the satisfaction of not only clearing their offices but directly helping the prosecution of the war.

Any inquiries on the matter may be addressed to the Directorate of Salvage and Recovery, Berkeley Court, Glentworth Street, London, N.W.I."

It may be well to remind readers that some old law books as well as documents are of considerable historical value. If in doubt it is wise to consult an expert; we know that valuable and rare legal books have been sent for salvage.

ANNUITIES AND INSUFFICIENT ESTATE.

By H. M. Broughton, Barrister-at-Law.

Nowadays a testator is inclined to overestimate the value of his estate, owing to so large a part of it going to the State before the persons he wishes to benefit can take anything. Provident testators may make provision for their estates proving insufficient by directing that some legacies or annuities should be paid in full in priority to the others. But where there is no such provision the Court adopts different methods of carrying out as far as possible the testator's wishes. Where the question is simply between one annuitant and the residuary legatees, and the annuity is charged on the capital as well as the income of the testator's estate, as the residuary legatees can take nothing until the annuitant is paid in full, the annuitant is not entitled to have the capital value of the annuity paid to him, but is entitled to have the deficiency of income made up out of capital (*Wright* v. *Callender*, 2 D. M. & G. 652; *Re Cottrell*, [1910] 1 Ch. 402, at p. 407; *Re Cox*, [1938] Ch. 556, at p. 562), but can get nothing more than that. Suppose the testator has left pecuniary legacies and an annuity or annuities and has directed his trustees to appropriate such a sum as would, when invested, produce an annual sum equal to the amount of the annuity (annuities), and to apply the income or, if necessary, the corpus of the appropriated fund in payment, the sum or what is left of it on the dropping of the annuity (annuities) to fall into and form part of his residuary estate. Now, if the estate of the testator was insufficient to pay the pecuniary legacies in full and to enable a sufficient sum to be appropriated and invested in trust investments to produce the annuity (annuities), it is clear that the letter of the testator's directions cannot be carried into effect. *In re Cottrell* (*supra*), the testator's estate was sufficient to pay the pecuniary legacies in full and to pay to the annuitant the value of the annuity as at the testator's death. Warrington, J. (as he then was) held that justice could be done to the pecuniary legatees, the annuitant and the residuary legatees by paying the pecuniary legacies in full and paying the capital value of the annuity to the annuitant, or if he wished it, investing it in the purchase of a Government annuity. Not only were the pecuniary legatees and the annuitant provided for by that arrangement, but in that particular case the residuary legatees got some residue. The actuarial value of the annuity must be treated as a legacy, and if the estate is insufficient to pay that legacy and the pecuniary legacies in full, then they all must abate in due proportion (*Re Cottrell, supra*, p. 407). In *Re Cox* (*supra*) the pecuniary legacies had priority over the annuities, so that

there was no competition between them, and the annuities (as a matter of construction) were to be paid before there was any residue. There was not a direction, but merely a power to set apart a fund the income of which would be sufficient to produce an annual sum equal to the amount of the annuities for the time being payable, and the income or, if necessary, the capital of this fund was to be applied in payment of every subsisting annuity. The amount of the estate was insufficient to enable the trustees to set apart a fund capable of producing income sufficient to answer the twenty-four annuities, but it was sufficient to enable the executors, having regard to the actuarial value of the annuities, to purchase such annuities and to leave a balance for the persons entitled to the residue.

Lord (then Mr. Justice) Simonds accepted the argument that where there were annuitants of very different ages the younger ones might not have their annuities during the whole of their lives if the annuities were paid out of the income and (if necessary) the corpus of the estate, whereas the older ones would have theirs during the whole of their lives. This means inequality of treatment, and his Lordship said: "The only fair way of dealing with annuities as between annuitants of different ages is to make an actuarial valuation of the annuities, and to pay the value of each so ascertained". With regard to there being no direction, but only an authority, the learned Judge did not think that that made any difference to the principle involved. Such a direction is not for the benefit of the annuitant, but is intended to assist the executors in distributing the residue.

The question came up again in *Re Chassiron* ([1939] Ch. 934), where there were six annuitants, their ages varying from eighty to forty-one, but there was no direction or authority given for setting apart a fund to meet the annuities. The testatrix directed that out of the income of her residuary estate her trustees should pay them, and that, if at any time the income should be insufficient, recourse might be had to the capital thereof. Mr. Justice Morton expressed his agreement with *Re Cox* and *Re Cottrell*, but distinguished them on the ground that in the case before him the testatrix's intention could be carried out exactly, though the residue might be exhausted, with the possible result that the older annuitants might be paid in full and the younger ones might not. The testatrix had directed the annuities to be paid out of income, and if at any time the income should be insufficient resource might be had to the capital of the residue. She had, in the opinion of the learned Judge, foreseen the event which had happened and had indicated what was to be done in that event. It was therefore held that there should be no valuation of the annuities, but that they should be paid, year by year, out of the income of the residue, and if the income were insufficient in any year, out of the capital thereof. The distinction between *Re Cottrell* and *Re Cox* on the one hand and *Re Chassiron* on the other is that in the former cases the directions of the testator could not be carried out, whereas in the latter they could.

In *Re Hill*, [1944] 1 A. E. R. 502, the Court of Appeal have laid it down that the rule by which annuitants are given the capital value of their annuities, when the annual income of the estate is insufficient, is a rule of convenience and not of law. In that case there were four

annuitants between the ages of fifty-nine and sixty-four, and there was evidence that there was sufficient residuary estate to pay the annuities for at least forty-four years, at the expiration of which period all the annuitants, if living, would be over one hundred years old. Consequently the testator's directions must be carried out and the annuities paid in full out of income, and, if that at any time was insufficient, out of capital, and the annuitants were not entitled to be paid the actuarial value of their annuities. Apparently this decision means that executors will, except in simple cases, have to obtain a decision of the Court before they pay to annuitants the capital value of their annuities. Executors may be tempted to purchase annuities, although the income of the estate is sufficient to provide in full the annuities bequeathed, but they cannot be advised to do this, unless specially authorised, as if the annuitant died early there would be a waste of capital of the estate.

TENANTS' COVENANTS—II.

Damage by Competent Authorities—The Landlord and Tenant (Requisitioned Land) Act, 1944.

By E. O. Walford, LL.D., Solicitor.

In a previous article in *The Conveyancer* (December, 1943) I suggested that in addition to the usual exception in respect of fair wear and tear and damage by fire a non-repairing tenant should be exempted from liability in respect of damage by any competent authority, war damage, act of God and inevitable accident. I left for further discussion the question of damage done by any competent authority. Even apart from war-time activities of local or other authorities it would seem to be reasonable that a tenant (whether undertaking repairing liability or not) should be exempt from any obligation to effect repairs or other works which are rendered necessary owing to the exercise by an authority of powers conferred by statute or statutory orders, regulations, by-laws or the like.

It is, however, to the exercise of powers conferred by Defence (General) Regulations that I intend to refer in this article. It is well known that under Regulation 51 the Crown can take possession of or do work upon premises, and that this power can be and has been delegated to local authorities and other bodies. By the term "damage by any competent authority" I mean damage by any authority which was competent to take possession of or do work upon premises pursuant to that Regulation or to any power conferred by any statute, statutory regulation, order, rule or by-law or the like.

The Doing of Work upon Land.

It would seem that if damage or, indeed, any kind of work is done to or upon the premises by a competent authority the tenant should not be under an obligation to reinstate during or at the end of his tenancy unless the requisite moneys are provided by the competent

authority. It will be found that so far as concerns works done pursuant to Regulation 51 two kinds of compensation are payable :—

(a) Compensation accruing from day to day (but payable quarterly in arrear) in respect of the diminution of the annual value ascribable to the doing of the work. It is payable to the person who is entitled, for the time being, to occupy "land" (which includes buildings) : Compensation (Defence) Act, 1939, s. 3 (2). Such compensation will remain payable until the land is restored to its former condition, so far as practicable, or if written notice is given by the authority to the occupier of its intention to pay a lump sum in discharge of compensation by a specified date, then the running compensation will cease one day prior to the completion of the restoration or (as the case may be) on the date specified in the notice (s. 3 (3) and s. 3 (9) (b)). There would appear to be nothing in these provisions which would justify the imposition upon a tenant of a liability to make good any damage done in the course or by reason of the execution of such works, although a repairing tenant would appear to be liable to do so in the absence of a provision exempting him from liability.

(b) When the running compensation above mentioned ceases to be payable, another kind of compensation will become payable. It will be payable to persons whose estates or interests are depreciated in value by the doing of the work (section 3 (4)). Thus if A is the freeholder, B a lessee for (say) seventy years at a ground rent, and C a tenant for twenty-one years at a rack rent, A, B and C will each receive a lump sum equivalent to the depreciation in the value (not the annual value) of their respective interests in the land by reason of the doing of the works (section 3 (4)).

Here the assumption is that the damage has not been and cannot be made good (section 3 (6)). Suppose that we are dealing with a proposed letting to D by C (above mentioned) for, say, seven years, on a full repairing lease.

Projecting the mind forward it may be imagined that after two years the property is damaged by a competent authority which lays low the building for military purposes. If D is paying £100 per annum, and can now get £70 per annum for the site (*e.g.*, if it happens to be suitable for a coffee stall), then D might get as compensation say five times £30 (£100 − £70) = £150, less a discount for immediate cash. But D would remain liable to make good the damage (*i.e.*, to reconstruct the building) and it would cost him perhaps £700 to £1,000 to do so. That would be "just too bad" as the saying goes; but such appears to be the position under the very badly drawn Compensation (Defence) Act, 1939, which, though amended by two subsequent Acts, is still in a very unsatisfactory state. I think that it is reasonably clear from what has been said above that there is no reason why a tenant should willingly place himself under liability to keep the demised property in repair notwithstanding the doing of work (which includes partial or complete demolition) by a competent authority. Accordingly the exception from repairing covenants of liability to make good damage done by a competent authority would appear to be justified so far as concerns "the doing of work". We

still have to consider damage done by an authority which takes possession of property.

The Taking of Possession.

I have mentioned above that the Compensation (Defence) Act, 1939, has been amended. The first amending Act was the Landlord and Tenant (Requisitioned Land) Act, 1942, which corrected some of the grosser absurdities of the Act (such as the complete failure to provide a separate formula for compensation where the tenant was paying an inclusive rental). The Act of 1942 did not, however, adjust the ridiculous position which arose out of the provisions of sections 2 and 12 (2) of the Act of 1939.

The Act of 1939.

A further, though as I hope to show not very successful attempt to put matters right was made by the Landlord and Tenant (Requisitioned Land) Act, 1942. To explain the provisions of the new Act, it is necessary to state the position as it stood under the Act of 1939.

(1) Although the compensation rental payable to the former occupier in respect of requisitioned land (including buildings) was fixed on the footing that the hypothetical tenant was responsible for repairs, it was nevertheless provided by the Compensation (Defence) Act, 1939, that the Crown should not be responsible for damage by fair wear and tear (sections 2 (1) (b) and 17). Obviously, a tenant who informed his landlord that he was prepared to enter into a full repairing lease, but required an exception in respect of fair wear and tear would be told that his proposition involved a contradiction in terms. But that is the position which exists under the 1939 Act. The Crown pays a lower rental because it is deemed (by the formula contained in the Act) to be under repairing liability, but as by another ingenious provision it is declared that the Crown does *not* in fact accept responsibility for fair wear and tear, it is clear that this playful jest or unintentional mistake (as the case may be) is at the expense of the former occupying tenant who will remain liable to the landlord in respect of fair wear and tear, but will receive no corresponding payment from the requisitioning authority. Why this anomaly was not dealt with by the recent Landlord and Tenant (Requisitioned Land) Act, 1942, I cannot say. Apparently "the powers that be" have appreciated the absurdity of the position, for it is understood that the Treasury have stated (under what authority I know not) in a letter to a certain Federation that compensation in respect of damage by fair wear and tear may be paid to the landlord *if* the landlord waives his right to recover damages from the tenant in respect thereof and subject also to certain other conditions. Apart from any publication of the Treasury statement by the Federation in question I am not aware of any public announcement by the Treasury of its ruling, though it is quite possible that some such publication has taken place. More detailed reference is made to this matter under "Fair Wear and Tear", *infra*.

(2) By section 2 of the Act of 1939 compensation was payable to the landlord in respect of damage done during the requisition period

(notwithstanding that the tenant might hold under a full repairing lease) on the giving up of possession by the requisitioning authority. The tenant was not exempted from liability for damage done by the requisitioning authority.

(3) To complete the absurd circle, section 12 (2) of the Act provided that compensation for damage was not to be paid to a person entitled to recover damages in respect of that damage. In other words, where the tenant was responsible under a repairing covenant for the damage done by the requisitioning authority, neither the landlord nor the tenant would receive any compensation from the authority!

THE NEW PROVISIONS.

It is most unfortunate that the 1944 Act does not resolve these difficulties completely. The effect of section 1 of the Act is as follows:—

(a) So long as possession is retained by the authority no remedy for breach of any repairing covenant is to be enforced in respect of *any* damage to the demised property occurring during the requisition period.

(b) The section then becomes "woolly". It next provides that if on possession being given up [by the authority] compensation in respect of the taking of possession becomes payable for any *such* damage to the covenantee (generally the landlord), no remedy for breach of the lessee's covenant is to be enforced at any time in respect of that damage. Now, so far as concerns damage by fair wear and tear, it has already been pointed out that compensation is not payable under the Act for that kind of damage. Hence, it would seem that the result of the last mentioned provision is that the lessor cannot ever sue the lessee in respect of any damage caused during the requisition period *except damage* caused by fair wear and tear; but by reason of (a) above the lessor must not sue for damage caused by fair wear and tear during the requisition period so long as the authority retains possession.

(c) Section 3 (2) contains certain provisions which make the section retrospective to August 24, 1939, and which provide for the discontinuance of proceedings pending at the commencement of the Act "so far as they relate to any such damage as aforesaid". I am unable to throw any clear light upon the words within quotation marks because, as stated above, the earliest part of the section relates to *any* damage, and the next part appears to relate only to damage for which compensation is payable. I can only hope that no reader of this article is concerned in any pending proceedings which may be affected by this sub-section.

REIMBURSEMENT OF LESSEE.

The legislation in connection with this matter of compensation appears to be fated either to be obviously inequitable or to be ambiguous. Section 2 of the 1944 Act deals with cases in which the requisitioning authority gives up possession, or has since August 24, 1939, given up possession of premises during the currency of a lease and compensation becomes or became payable to the landlord in respect of damage during the requisition period. This section provides that

if the tenant incurs (not "has incurred") expenditure in making good that damage, then he is to be entitled to recover from the person entitled to the compensation such a sum as shall be fixed by the Court (failing agreement), as the amount of compensation payable in respect of the damage so made good. The wording of this section is very clumsy; but in its clumsy way the section does appear to make it clear that the tenant cannot recover more than the amount of his expenditure above mentioned.

This section is not much more satisfactory than section 1. It refers to cases where compensation "becomes or has become payable" and to land which "is or has been" given up; but it gives the tenant the right of recovery above mentioned only if he "incurs" expenditure in making good the damage. The inference is that if before the passing of the Act (March 1, 1944) the tenant has *already* incurred such expenditure he will not be entitled to recover any part of that expenditure under this new section. I am quite at a loss to understand the logic of this provision. Nor am I able any more easily to understand why tenants who have settled or may hereafter settle with their landlords in cash for damage in respect of which the landlord is entitled to compensation should not be able to recover the appropriate amount under this section. *Fiat justitia* is a much more enlightened precept than *Interest reipublicæ ut sit finis litium* where questions of unjust enrichment are in issue.

Settlement in Cash.

Until the passing of the 1944 Act lawyers were bound to advise tenants that it was no answer to a claim under a repairing covenant to urge that the damage had been done by a requisitioning authority.

If tenants have in fact settled in cash with their landlords for damage done by a requisitioning authority, or if they do so after the commencement of the Act, there would appear to be nothing in the Act to enable them to recover any part of the payment, whether the payment is or was made before or after the Act. The principle of the Act is wrong: compensation for damage should not have been made payable in all cases to the landlord. In cases where the tenant is liable for the damage the compensation for that damage ought to be payable to the tenant. Alternatively, the tenant should be exempted from liability for damage done by requisitioning authorities. By section 12 (2) of the Compensation (Defence) Act, 1939, it was declared that no compensation is payable to any person in respect of any loss of or damage to property if and so far as that person has become entitled, apart from the Act, to recover any sum by way of damages in respect of that damage. If the tenant has agreed to keep the property in repair and it has been damaged then the tenant is presumably liable, since no exemption is granted by the Compensation (Defence) Act, 1939. Accordingly, if matters stood thus the tenant would be liable in damages, but the requisitioning authority would be under no liability to pay compensation, and even if it were so liable it could not pay compensation to the tenant, because the Act provides only for the payment of compensation to the landlord. The 1944 Act provides that the 1939 Act is *not* to preclude the recovery by

the landlord of compensation for damage under that Act by reason only of the fact that the landlord is entitled to the benefit of a covenant which relates to that damage (section 3). Thus, the requisitioning authority will no longer be able to take the point that the landlord cannot receive compensation. Moreover, by reason of the provisions of section 1 the tenant will be freed from liability in so far as the Crown is liable to pay compensation for the damage in question. At least the exemption from liability would appear to be so limited. That point is further discussed in a later part of this article.

Now let us see what the position would be if the tenant had before the passing of the Act paid a sum by way of damages in respect of injury to the property by the requisitioning authority (for he would have had no answer to the claim). The efforts of the Legislature in connection with this matter of compensation seem to be singularly ill-fated. Having received a sum in settlement of damages from the tenant, the landlord will now be entitled to recover compensation from the requisitioning authority. The position is obviously absurd. From start to finish this matter appears to have been handled by persons who have no practical working knowledge of leases, or no imagination.

PRACTICAL RESULTS.

It may not be realised by those responsible for the framing of the 1944 Act that it has been necessary for solicitors advising landlords and tenants to take the Compensation (Defence) Act, 1939, as it was found. In the case of leases granted during the war the solicitor acting for the prospective tenant naturally attempted to obtain (in the repairing covenant) an exception in respect of damage done during requisitioning (as the compensation was to be paid to the landlord). In some cases, however, the landlord would only agree to give an authority to the tenant to receive the compensation (if any) which was payable to the landlord under the 1939 Act in respect of damage during requisitioning. The amending Act will now produce the following ridiculous result in such cases.

(a) By virtue of section 1 of the 1944 Act the tenant will now be exempt from liability in damages in respect of such damage—at any rate to the extent to which compensation is payable by the requisitioning authority.

(b) Compensation *will* be payable to the landlord but he will be liable under his covenant to authorise the tenant to receive it, and to stand by whilst the tenant takes the compensation money!

(c) When the tenant receives the compensation money he will be under no liability to expend it in the making good of the damage in respect of which it has been paid.

As the 1939 Act was so obviously badly drawn one would have expected that the Legislature would have taken a little more care, and exercised a little more imagination, when setting about the task of amending the 1939 Act.

But, unfortunately, these are not the only deficiencies in the new Act.

Fair Wear and Tear.

It is necessary to explain at length the position in connection with fair wear and tear under the Compensation (Defence) Act, 1939, and a certain subsequent ruling or Treasury Direction (*a*), in order that the present position may be understood. By virtue of section 2 (1) (b) and section 17 (1) of the 1939 Act, the Crown is to pay to the person who is receiving the rack rent (or would receive the rack rent if the premises were let at a rack rent) when the requisitioning ceases, the cost of making good damage occurring to the land during the requisition period (unless made good), *no account being taken of fair wear and tear* or war damage: (see as to the exception of war damage, section 109 (4) of the War Damage Act, 1943). Fair wear and tear is defined by section 17 (1) of the 1939 Act as such fair wear and tear as might have been expected to occur but for the taking of possession by the requisitioning authority, or in other words normal fair wear and tear. Thus the formula adopted by the Act leaves a repairing tenant in a very unsatisfactory position. The Crown, or any other competent requisitioning authority, is under no liability for fair wear and tear, but a full repairing tenant is so liable. It appears that after several years of war the Treasury have written to the National Federation of Property Owners in the following terms: "It has been decided that, in any case where compensation has been assessed strictly in accordance with the provisions of section 2 (1) (a) of the Compensation (Defence) Act, 1939, fair wear and tear *may* be taken into account in assessing compensation under section 2 (1) (b) of the Act, providing the compensation so assessed is expended in making good the damage. Where the requisitioned property is under lease and the tenant is liable to the landlord for fair wear and tear, the wear and tear will not be included in compensation payable under section 2 (1) (b) to the owner unless he produces satisfactory evidence that he has waived any claim which he may have in this respect under the terms of his lease with his tenant".

Thus, the position according to the 1939 Act is that no compensation in respect of fair wear and tear can be paid; but the Treasury appears to have stated that such compensation *may* be paid if the requisition rental has been fixed strictly in accordance with section 2 (1) (b), under which the rental is fixed on the assumption that the tenant is responsible for keeping the property in repair.

Whether the Treasury purports in this matter to wield a dispensing power or a suspending power or merely an expending power I do not know. I can only say that this would appear to be a peculiar method of amending an Act of Parliament. It might perhaps be exhibited by the Government as an example of the burgeoning of benevolent bureaucracy. Far be it from me to discourage the Treasury from attempting to put right an injustice created by the absurd provisions of a statute even if their action amounts to an illegal disbursement of public moneys. This performance would, however, be easier to understand if the Compensation (Defence) Act, 1939, had not recently been amended by the Act which

(*a*) As will be seen later I am not certain whether "Treasury Direction" is the correct description of the ruling which appears to have been given.

is the main subject of this article. Why statutory confirmation of the ruling of the Treasury has not been afforded by that Act it is not for me to conjecture. Obviously the Treasury has no right to overrule an Act of Parliament. If the Treasury is to set itself up as possessing power to dispose of public revenue—for it amounts to that—where is the line to be drawn? Presumably it is to be drawn where the Treasury chooses to draw it, and not where the Legislature has drawn it. It is a question of principle. The Treasury has in fact no power to disburse public moneys contrary to the express provisions of the 1939 Act. If it is recognised that the Act is inequitable it should be amended, and back door methods should not be adopted. The 1939 Act was palpably badly drawn, and it should long since have been scrapped. Instead of taking that step and preparing a new Act the Legislature has patched up a few defects, but the patching of so important an Act coupled with a letter to a Federation indicating that the Treasury *may* do something contrary to the terms of the Act upon terms which they choose to impose in variation of the statute is not a very praiseworthy performance. Moreover, the result is that it is quite impossible to advise clients as to their exact position. Even as to the Treasury letter there is no certainty that payment will be made, and the condition that the compensation rental must have been fixed strictly in accordance with the formula laid down by section 2 (1) (a) produces the following result. The landlord will presumably have no immediate means of knowing whether the rental was or was not fixed strictly in accordance with the section 2 (1) (a) formula because that rental is paid to the tenant. Further, the 1944 Act is so drawn that, if the lease determines while the requisitioning continues, no breach of any repairing covenant is enforceable at any time in respect of any damage to the land occurring during the requisition period, *whether compensation is payable to the landlord in respect of damage during the requisition period or not.*

A Deceptive Amendment.

According to Hansard the Solicitor-General, when introducing an amendment inserting this provision, stated that there might be circumstances arising between the end of the lease and the end of the requisition period which prevented the landlord from recovering compensation, and yet still make it unfair that the landlord should recover against the tenant, giving as an example the case in which the Crown does the repairs instead of paying the compensation. If those were the circumstances with which the amendment was intended to deal, I can only say that the wording employed bears very little resemblance to the representations of the Solicitor-General. It will be observed that there is no suggestion whatever that the deprivation of the landlord's rights is dependent upon the making good by the Crown of the damage, or that the deprivation only takes place (as implied by the Solicitor-General) where it would be unfair that the landlord should recover under the tenant's covenant. In fact the provision is that "if the lease determines while possession of the land is so retained" (*i.e.*, by the requisitioning authority) then the

lessee's repairing covenant is not to be enforced at any time in respect of *any* damage to the land occurring during the requisition period.

If the lease does not determine during the requisition period then the landlord's remedies in respect of damage during the requisition period are annulled only "*if* upon possession of the land being given up" by the Crown or other requisitioning authority compensation becomes payable, if the only damage is fair wear and tear no such compensation is payable, and the landlord can sue the tenant in respect of that damage!

Want of Logic.

Thus, if it happens by mere chance that the lease ends whilst the Crown still retains possession the Legislature have thought fit to deprive the landlord of any right to enforce his rights (as above mentioned) whether compensation is payable by the Crown or not. Let us bear in mind the point that no compensation is payable by the Crown in respect of fair wear and tear. If, however, the lease does not end, but the requisition period does end, then the question whether the repairing covenant can be enforced in respect of the requisition period depends upon whether "compensation . . . becomes payable for any such damage" (*i.e.*, "any damage to the land occurring during" the requisition period). If compensation does so become payable then the lessee's repairing covenant cannot ever be enforced in respect of that damage. It is impossible to tell how this provision will be interpreted by the Courts. Does this provision mean that if compensation is payable for any damage during the requisition period, then the lessee's repairing covenant is not to be enforced in respect of the damage for which such compensation is payable (thus *excluding* damage by fair wear and tear), or does it mean that if compensation is payable for any damage during the requisition period, then the lessee's covenant is not to be enforced in respect of any damage to the land occurring during the requisition period (thus *including* damage by fair wear and tear)? I cannot say, for it is possible quite legitimately to construe this provision (section 1 (1)) in either way. However, whatever may be the answer to that question, if we assume that the only damage is damage by fair wear and tear it is clear that no compensation will be payable. That being so the landlord is *not* deprived of his right to pursue his remedy against the lessee on the repairing covenant when the requisition period ends. Thus, the result is that if the lease ends during the requisition period the landlord loses his right to recover damages from the tenant in respect of damage by fair wear and tear, but if the lease ends after the requisition period ends—and remember that it might end one day later—the landlord's rights against the tenant in respect of damage by fair wear and tear are preserved! If anyone can make sense of such a situation it is more than I am able to do. Muddles of this kind are perhaps excusable in statutes which are framed hurriedly at the commencement of a war; but there is little excuse for them in an amending Bill introduced more than four years after the original Act was passed.

STILL MORE DEFECTS.

Nor does this catalogue quite exhaust the list of defects which are to be observed in the 1944 Act.

Section 1 (2) provides another problem which can only be solved satisfactorily by a further amendment. The provisions which have just been discussed are made retrospective to June 24, 1939, and pending proceedings are to be discontinued " so far as they relate to any such damage as aforesaid ". I have already pointed out that there are or may be two kinds of damage falling within section 1 (1), *viz.*, (a) any damage to the land occurring during the requisition period, and (b) damage for which compensation becomes payable at the end of the requisition period (the latter kind of damage being exclusive of fair wear and tear). Hence it is impossible to determine what is meant by " any such damage as aforesaid " !

Again, the Act applies to repairing covenants *contained in a lease* (including a tenancy agreement). Why it should not apply to covenants contained in a licence to use premises (*e.g.*, a licence relating to the bars at a theatre), or to a covenant contained in a licence to make alterations (*e.g.*, a covenant to restore or redecorate the premises at the end of the period of the licence) I am unable to say. If it was reasonable to apply these provisions to leases, then it is obvious that they ought to have been extended to licences or other documents containing repairing covenants. This point is illustrated by the recent decision of the *Duke of Westminster* v. *Store Properties, Ltd.*, " Times " Newspaper, December 13, 1943, where it was pointed out that sums payable by way of additional rent payable under the terms of a licence are not " rent reserved by a lease ".

In conclusion it is possible to award one half of one good mark to those responsible for the preparation of this Act. The term " repairing covenant " is so defined as to include a covenant to pay a sum of money in lieu of leaving or putting the premises in repair at the termination of the lease. But even that provision is really very poor and is hardly worth the half mark. It does not deal clearly with the common cases where there is an option either to repair or pay a specified sum or where the landlord can either demand the repair of the property or payment of a specified sum; nor does it cover the case in which the lessee is either to expend each year a specified sum upon repairs or to pay the difference between any smaller sum so expended and the specified sum to the lessor.

The fact is that the Compensation (Defence) Act, 1939, was deplorable, as is obvious from the substantial amendments which were made by the Landlord and Tenant (Requisitioned Land) Act, 1942, and the Landlord and Tenant (Requisitioned Land) Act, 1944, is not very much better than the Act of 1939.

LIFE TENANTS AND REMAINDERMEN: INSURANCE.

By Sydney Preston, Barrister-at-Law.

A policy of insurance against fire or any other peril is a contract whereby the insurers agree to indemnify the assured against loss caused by the destruction of or damage to the subject-matter of the insurance. If the entire ownership of that subject-matter is in the assured at the time of the loss and the sum insured (or, more accurately, the limit set by the insurers upon the amount for which they are to be liable) is not less than the amount of the loss and the policy is not subject to average or to any other limitation, the assured will be able to recover the whole amount of his loss, but no more.

If his interest in the subject-matter is a limited one and there is nothing to show that he intended, when taking out the insurance, to cover other interests besides his own (*a*), he cannot recover more than the loss which he himself has suffered.

Where property is the subject of a settlement and the legal title is vested in trustees it can hardly ever happen that the operation of this principle of indemnity, and indemnity only, will bring about difficulties in the assessment of a loss because the trustees, whose insurable interest is equal to the value of their legal interest, will probably be empowered by the deed or will to which they owe their appointment to insure in their own names at the expense of the beneficiaries, but even if no power of this kind is expressly given they can fall back upon their statutory right to insure against fire (*b*) to the extent of three-fourths of the full value of buildings or chattels comprised in the trust (*c*), and they will probably do so although the power is merely permissive and not imperative. If they do insure in their own names they can recover the whole amount of the loss and will hold it in trust for the beneficiaries and not for themselves (*d*). Even if a life tenant or a remainderman takes out a policy in his own name only there will seldom be difficulty in proving that the intention was to protect the interests of all the beneficiaries, especially in cases where the reversion is in the children of the life tenant. In actual practice, assurance companies rarely call upon claimants to prove their title to the property, the presumption being, if the policy under which the claim is made is the only one, that it covers, or was intended to cover, the whole.

Where, however, the life tenant and the remainderman are strangers to one another or are, for any other reason, "at arm's length", and there is no insurance in the names of trustees—either because there is

(*a*) *Castellain* v. *Preston* (1883), 11 Q. B. D. 380, C. A.

(*b*) Settled Land Act, 1925 (c. 18), s. 102; Trustee Act, 1925 (c. 19), s. 19. Probably the statute is an enabling one and does not impliedly forbid trustees to use trust money to pay premiums for insurances against other perils. In Canada where in some places the risk of damage by hail, especially to growing crops, is a very heavy one, it has been held that a trustee is justified in using trust money to cover that risk: *Re Siebel Estate*, [1931] 2 W. W. R. 581.

(*c*) *Re Earl of Egmont's Trusts; Lefroy* v. *Egmont*, [1908] 1 Ch. 821, where it was held that chattels are "insurable property".

(*d*) This is so although the trustees pay the premiums out of their own pockets. *Re Emett or Emmett; Ex p. Andrews* (1816), 2 Rose 410; 1 Mad. 573.

no trust or because the trustees have not seen fit to exercise their power to insure—each limited owner will have to make his own arrangements for insurance if he wants to protect his interest in the property. If either of them is liable to repair or reinstate this liability is enough, by itself, to give him an insurable interest to the full extent of the cost of performing his obligation; if a loss happens he can recover the full amount secured by any policy he may have taken out, and the other will be able to recover from his own insurers, within the scope of his policy, the amount of the damage to his own separate interest caused by the peril against which the insurance was made, for the insurers cannot resist or delay payment on the ground that their assured has another remedy; on payment, however, they will be subrogated to his right to sue the defaulter and if he himself recovers damages or if the premises are restored to their former state he must repay to his insurers either (1) the amount he has received from them, or (2) the difference between the benefit he has had from all sources and the amount of his loss, whichever happens to be the less; for, although he is entitled to a full indemnity, he cannot have more at the expense of his insurers.

There is ground for saying that a limited interest gives the owner of it an insurable interest to the extent of the full value of the subject-matter although the amount recoverable, in the event of a loss, may be less, but whether this is so or not, a policy for the full value would be a lawful one because, according to general insurance practice in the United Kingdom, the owner of property, acting with the utmost good faith, can insure it for as much as he likes and by as many policies as he likes, so that over-insurance does not make the contract either void or voidable. As, therefore, the question of insurable interest, and the extent of it, is secondary and academic the only problem is how to provide, in advance, an insurance for a sum which is enough, but not more than enough, to cover any possible loss to the assured's interest. To pay premiums on a greater sum when the assured has no intention of protecting any interest outside his own would be a waste of money. If there should be such an intention it should be clearly recorded for, after the loss has happened, it would from the nature of the case be hard to convince the insurers or anyone else that it had existed.

The easiest and simplest way would be for the life tenant and the remainderman to take out a policy in their joint names and to apportion the premium, but they may not be able to agree to do this, and, if they do, difficulties may arise when a loss happens and it becomes necessary to divide the amount recovered.

When no one is under any express or implied obligation to repair or reinstate the only way in which the life tenant and the remainderman can get full value for the premiums they pay is for each of them to take out a policy covering the value of his own interest and no more—or very little more. The value of the life tenant's interest being a steadily diminishing one his need can only be met by a diminishing sum insured measured by the value, during the term for which any one premium is paid, of that interest; strictly speaking the value falls daily but it will be convenient to take periods of one year. These values depend upon the assured's expectation of life and can

easily be worked out by using the recognised tables. The policy should incorporate a schedule setting out the sum to be insured during each year of insurance and the premium therefor. At the outset, provision might be made for ten years, and if at the end of that time the insurance is still to be kept on foot a new policy with a new schedule could be issued. Alternatively, one premium might be paid down when the policy is taken out, to cover the risk so long as the assured lives; the amount of such a premium could be easily worked out by the assurance company's actuary. The remainderman's interest, being one which steadily increases in value, can be covered by a policy incorporating a schedule setting out sums insured representing the present value, at the beginning of each year, of the property which will be his when the life tenant dies, and the yearly premiums payable thereon.

The combined sums insured at any given period of time should in theory be equal to the full value of the subject-matter at that time. In certain circumstances, however, the sum payable under both policies in respect of a loss may be greater (*e*); against this, the remedy of the insurers is to join in reinstating the destroyed or damaged subject-matter instead of paying cash, but as it may not be possible to compel them (*f*) to do this it might be expedient to add a small percentage to each yearly sum insured. The state of the life tenant's health may also be a factor to be taken into account in fixing the values of his and the remainderman's interest respectively.

If rent is payable by the life tenant this, too, must be taken into account in the valuation of both interests.

Where one owner of a limited interest is liable to repair or reinstate the other need not throw away his money on insurance unless he has misgivings about the willingness or the ability of the person liable to perform his obligation. If an insurance is deemed necessary it would be enough to cover the contingency of default only, and the full risk of destruction or damage need not be paid for.

In some respects this problem is simpified and in other respects it is complicated by an agreement which a certain group of assurance companies, members of the Fire Offices Committee—the "tariff" offices—made between themselves as a result of the decision in *North British and Mercantile Insurance Co.* v. *London, Liverpool and Globe Insurance Co.*—"*King and Queen Granaries Case*" (*g*).

By this agreement, to which now nearly all the assurance companies and many underwriting members of Lloyd's are parties, all policies on a building which has been destroyed or damaged rank for contribution notwithstanding that they cover different interests; this amounts to a renunciation of subrogation rights which, but for the agreement, might have arisen in favour of one or more of the insurers. Since the holders of the policies are not parties to the agreement it is, so far as they are concerned, *res inter alios acta*, so that it cannot take away from any one of them his right to be paid, by his own insurers, the amount of his own loss, and when the losses under all the

(*e*) *Westminster Fire Office* v. *Glasgow Provident Investment Society* (1888), 13 App. Cas. 699, H. L. (Sc.).

(*f*) See below.

(*g*) (1876), 5 Ch. D. 569; (1877) 5 Ch. D. 569, C. A.

"subsisting" policies have all been settled it will be for the insurers to apportion the total amount among themselves. Whether the agreement would bring into contribution a policy which covers, not the building itself, but the risk of default by someone who is liable to make good the destruction or damage, is an open question, the answer to which may well be left to assurance companies and underwriters.

Partial losses arising under policies drafted on the lines above set out would probably have to be settled on the footing that the injury to the life tenant's right to possession and enjoyment of the subject-matter of his tenancy cannot be made good except by repairing the damage or paying the cost of it (*h*)—due allowance being made for the state in which the premises were when the loss happened. If the life tenant's insurers do this the remainderman will suffer no loss, but if his insurers are parties to the "contribution" agreement they will have to pay their rateable share of the loss borne by the life tenant's insurers. If the life tenant is not insured, if he refrains from enforcing his full rights under any policy he may have, or if, being under no obligation to repair, he elects (his insurers being willing) to settle for a payment in cash and keep the money, the remainderman will have to look to his own insurers for indemnity—the measure of which would probably be the money value of the injury to the value of his reversion; if he is not insured, he will have to bear his own loss.

Assurance companies are under a statutory obligation (*i*) "upon the request of any person or persons interested in or entitled unto any house or houses, or other buildings, which may hereafter be burnt down, demolished, or damaged by fire . . . to cause the insurance money to be laid out and expended, as far as the same will go, towards rebuilding, reinstating, or repairing such house or houses, or other buildings so burnt down, demolished, or damaged by fire. . . ." A tenant or a remainderman might, by giving the notice required by the Act, be able to get the benefit of an insurance taken out by someone else, because the right to demand reinstatement is not founded on the "person's" interest in the policy (*k*) but on his interest in the building. It has been held, in New Zealand, that the Act does not take away from assurance companies their right of subrogation and, if this decision is sound, the weapon provided by the Act might be a two-edged one in the hands of a "person" who is himself liable to make good the damage (*l*).

(*h*) *Simpson* v. *Scottish Union Insce. Co.* (1863), 1 Hem. & M. 618: "I agree that a tenant from year to year, having insured, would have a right to say that the premises should be rebuilt for him to occupy, and that his insurable interest is not limited to the value of the tenancy from year to year. . . ."—Page-Wood, V.C., at p. 628. The right of a tenant for life would certainly be as strong as that of a tenant from year to year.

(*i*) Fires Prevention (Metropolis) Act, 1774 (14 Geo. 3, c. 78), s. 83. Notwithstanding the title of the Act, the section is not confined to the restricted area to which some of the other sections applied: *Re Barker, ex parte Gorely* (1864), 4 De G. J. & S. 477; *Re Quicke's Trusts; Poltimore* v. *Quicke* (1908), 1 Ch. 887; *Sinnott* v. *Bowden* (1912), 2 Ch. 414. The section does not apply to Scotland: *Westminster Fire Office* v. *Glasgow Provident Investment Society* (1888), 13 A. C. 699, H. L.; nor to Ireland: *Andrews* v. *Patriotic Assce. Co. of Ireland (No. 2)* (1886), L. R. Ire. 355.

(*k*) This is where Lord Selborne went astray in his *dictum* on the subject in *Westminster Fire Office* v. *Glasgow Provident Investment Socy.* (1888), 13 A. C. 699, H. L., at p. 712.

(*l*) *Searl* v. *South British Insce. Co., Ltd.* (1916), N. Z. L. R. 137 (New Zealand).

ESTATE DUTY AND THE BREAKING OF SETTLEMENTS.

By R. Lachs, Barrister-at-Law.

The effect of section 43 of the Finance Act, 1940, on the breaking of settlements has been recently discussed in the "Conveyancer's" column of the *Law Times* (vol. 195, p. 100, and vol. 196, p. 187). The view has been expressed that by virtue of this section, which has superseded section 11 of the Finance Act, 1900, estate duty is now chargeable on the whole fund as originally settled, if on a distribution of the fund any part of it is paid out to the tenant for life at any time, whether inside or outside the period of three years preceding his death. This result is arrived at by the following steps: 1. Section 43, F. A., 1940, provides, *inter alia*, in sub-section (1), that property in which an interest limited to cease on a death subsisted shall be deemed to pass on the death if the interest "has been disposed of or has determined, whether by surrender, assurance, divesting, forfeiture or in any other manner", and in sub-section (2), that a *bona fide* disposition or determination effected or suffered three years before the death is excepted from the section, provided that "*bona fide* possession and enjoyment of the property in which the interest subsisted was assumed immediately thereafter by the person becoming entitled by virtue of or upon the disposition or determination and thenceforward retained to the entire exclusion of the person who had the interest and of any benefit to him by contract or otherwise". 2. Where the life tenant (whether by gift or purchase) acquires the reversion, and so breaks the settlement, the life interest is determined by reason of the merger of the life interest in the reversion, and estate duty is chargeable at his death on the fund as originally settled. This is so, even if such merger takes place outside the statutory period of three years; for it is impossible to say that on the determination of the life interest the life tenant was excluded from possession and enjoyment of the property in which the interest subsisted. 3. Where the life tenant surrenders his life interest in the settled fund, but subsequently acquires an interest in the fund from the reversioner, whether by gift or purchase, or by devolution under a will or an intestacy, estate duty is chargeable on the settled fund at the life tenant's death. This is so, even if the acquisition takes place outside the statutory period; for the reversioner cannot be said to have retained possession and enjoyment of the property to the entire exclusion of the life tenant.

If this is the true construction of section 43, F. A. 1940, the practical consequences will be far-reaching indeed. It would mean that estate duty would be chargeable, on the value of the whole settled fund at the time of the distribution, on a notional passing of the fund on the death of the life tenant. This would be so, though the distribution of the fund may have taken place very many years before the life tenant's death and his share in the fund may have been spent by him long before his death. Following this line of argument to its logical conclusion, the view has been expressed that

the settlor of a revocable settlement who has reserved a life interest to himself is caught in the net of section 43. If he revokes the settlement, and the trust fund thus reverts to him, estate duty is always chargeable on the whole settled fund at his death, no matter whether the settlement was revoked inside or outside the statutory three years, or whether the fund was still in the hands of the settlor at the time of his death (see *Law Times*, vol. 196, p. 187). In other words, it is postulated that, for the purposes of estate duty, section 43 embodies the principle "once a settlement, always a settlement". This principle was unsuccessfully pleaded by the Crown in *Attorney-General* v. *Beech*, [1898] A. C. 53, as follows: "The scheme of the Finance Act, 1894, is to hit all property which passed or was settled to pass from one person to another on a death. . . . The question is not what any individual acquires or enjoys. As soon as the settlement was made it was stamped with liability". In the House of Lords this contention was rejected, Lord Halsbury expressing his opinion in these words: "This is a statute which is intended on the face of it to impose a tax upon property passing on death. . . . It is said indeed that there was a life interest, and that when once a settlement has been made it is supposed to fasten and stamp upon every estate that may be comprehended within it an indelible obligation to pay estate duty at some time or another. It seems to me that is not the natural meaning of the words". If it was intended in 1940 to introduce a new departure into the principal Act of 1894, very clear language would be required—see Lord Halsbury's *dictum* in *Tennant* v. *Smith*, [1892] A. C. 150: "Inasmuch as you have no right to assume that there is any governing object which a taxing Act is intended to attain other than that which it has expressed by making such and such objects the intended subject for taxation, you must see whether a tax is expressly imposed". This language, laying down a canon of construction for income tax Acts, was subsequently applied to the construction of the Finance Act, 1894, in *Attorney-General* v. *Beech*, [1898] 2 Q. B. 147.

The views on the operation of section 43, as given above, are based on two assumptions, namely—(1) in the case of the life tenant acquiring the reversion, that the resulting merger of the life interest in the reversion effects a "determination" of the life interest, and (2) in the case of the life tenant surrendering his interest, that any acquisition by the life tenant of an interest in the settled fund operates in all events and at all times so as to prevent the person becoming entitled to the property on the surrender of the life interest from enjoying it to the entire exclusion of the life tenant or of any collateral benefit to him.

The first assumption, which is supported by the author of Dymond, *Death Duties*, 9th ed., p. 32, can perhaps be tested in this way: The words "where an interest limited to cease on a death has . . . determined" evidently refer to a determinable life interest, that is to say, an interest "which is so limited that it may come to an end before the completion of the maximum period designated by the grantor" (Cheshire, *Modern Real Property*). The word "determined" therefore refers to a collateral limitation fixed by the grantor. Merger, however, is not a collateral limitation of the grant;

its operation stands on an entirely different footing. A life interest is not a determinable life interest by reason only of the possibility of its becoming merged in the reversion. Merger has been defined as the "extinguishment by act of law of an estate in another by the union of these two estates" (Preston, *Conveyancing*, vol. 3, p. 6). It is noteworthy that the bringing to an end of the lesser estate by way of merger is called "extinguishment", and not "determination", and it is perhaps even more significant that the subject of merger is generally dealt with in legal text-books under the heading of "extinction of interests", and not under "determination of interests" (see Cheshire, *Modern Real Property*, and *Halsbury's Laws of England*, Hailsham ed., vol. 27). This terminological distinction is by no means unknown to the statutes relating to death duties, as is shown by section 57 of the Finance Act, 1910. This section (which was enacted to get rid of *Attorney-General* v. *Duke of Richmond and Gordon*, [1909] A. C. 466) uses the words "extinction" and "extinguish" in connection with interests in expectancy in order to indicate the effect of the coalescence of such interests with vested interests, and the words are intended to denote the effect of merger. It is submitted that, if it was intended to extend the application of section 43, F. A., 1940, to the cessation of a life interest by way of merger, the Legislature would have used appropriate words to signify such intention.

But assume that the term "determination" is capable of being construed so as to include the effect of merger. The question then arises whether determination by merger is, upon the proper construction of section 43, within the four corners of the statute. This would appear to depend on the meaning of the general words "or in any other manner" following after the particular words "by surrender, assurance, divesting, forfeiture". It is settled law that a taxing Act must be construed upon the same principles and by the same rules as any other Act: *Mersey Docks* v. *Lucas* (1881), 51 L. J. Q. B. 114. Consequently, it has been held that "if upon the ordinary rules of construction general words would be limited on the *ejusdem generis* doctrine by preceding particular words, this construction would be applied in a taxing statute equally with any other statute" (*per* Vaughan Williams, L.J., in *Attorney-General* v. *De Preville*, [1900] 1 Q. B. 223). The principle of the *ejusdem generis* rule is, of course, that general words must be confined to things of the same kind as those signified by preceding particular or specific words: *R.* v. *Edmundson* (1859), 28 L. J. M. C. 213. Now the things enumerated by the particular words "surrender, assurance, divesting, forfeiture" have two features in common, first, that they operate in such a manner as to deprive the life tenant of his beneficial interest in the property, and second, that this effect flows from the intention of either grantor or grantee, and not from mere operation of law. Merger, however, so far from defeating the beneficial interest of the life tenant, has the effect of preserving its substance to the life tenant by uniting it with the reversion. Furthermore, this effect results entirely from the operation of law and is, in fact, independent of any intention of the parties. For both these reasons merger is not "*ejusdem generis*" and is therefore not a manner of "determining"

a life interest within the meaning of section 43, F. A. 1940. Nor is merger a mode of "disposing" of a life interest. Section 59, F. A., 1940, defines this expression as follows: "'Disposition' includes any trust, covenant, agreement or arrangement, whether made by a single operation or by associated operations . . ." It seems clear that merger cannot come within the definition, because merger, being the effect of an operation of law, cannot be regarded as an agreement or arrangement "made" by any operation.

The practical conclusions which the writer draws from the preceding observations are these: If the reversioner assigns his interest to the tenant for life, no estate duty is payable on the settled property as such, irrespective of whether the transaction takes place within or without three years of the life tenant's death. *Attorney-General* v. *Llewelyn*, [1935] 1 K. B. 94, is in no way affected by section 43, F. A., 1940. Where the trust fund is divided between tenant for life and reversioner the reversioner pays estate duty on his share, unless the division takes place outside the three years and the life tenant is entirely excluded from the possession and enjoyment of, and any benefit from, the settled fund. The estate of the life tenant, on the other hand, pays estate duty only on so much of his share as forms part of it at the death of the life tenant. Dymond seems to dissent from this view (see p. 32), but this is difficult to reconcile with the statement on p. 6 (with which the writer fully agrees): "Where the deceased, being tenant for life of settled property, acquired (by devolution from a deceased remainderman or otherwise) the immediate and absolute reversion to the property, or a share thereof, expectant on the termination of his own life interest, the property or share, as the case may be, falls to be treated as part of his free estate, and not as passing under the settlement". For the same reasons no estate duty is chargeable under section 43 on a settled fund in which the settlor had a life interest, where the settlement has been revoked and the fund has reverted to the settlor; and this is so whether the settlement is revoked within or without three years of the death of the settlor.

The accuracy of the second assumption depends on the true meaning of the phrase "retained to the entire exclusion" of the life tenant "and of any benefit to him by contract or otherwise" (section 43 (2)). These words have been construed to the effect that the exception from estate duty under section 43 (1) cannot apply whenever the life tenant, after his life interest has been disposed of or has determined, acquires, in any manner whatsoever, an interest in the settled fund from the reversioner. The words in question have their origin in section 38 of the Customs and Inland Revenue Act, 1881, as amended by section 11 of the Customs and Inland Revenue Act, 1889. In construing section 43 (2), F. A., 1940, due regard must be paid to the authorities construing those earlier Acts. In *Attorney-General* v. *Seccombe*, [1911] 2 K. B. 688, Hamilton, J., as he then was, held that the meaning of the phrase is subject to certain limitations. "The intention of the Legislature was to exclude from liability to estate duty a certain category of gifts, and there is a danger of entirely nullifying this provision if the section is construed so that any enjoyment, however slight, by the donor *subsequently*

to the gift will bring the property within the charging words. . . ." He then quoted the Scottish case of *Lord Advocate* v. *Stewart* (8 F. 579) and said : " The principle there laid down, as I understand it, is that possession and enjoyment or benefit from which the Act contemplates that the cedent or donor must be entirely excluded must be derived from some enforceable right, a benefit, as the Lord President said, *which was part of his property before the cession.*" (Italics by writer.) This language indicates that it is the retention by the donor of some benefit rather than the subsequent acquisition of a benefit which brings the gift within the category of gifts chargeable with duty. True, it was held in *Attorney-General* v. *Worrall,* [1894] 1 Q. B. 99, that the benefit from which the donor must be excluded need not be one created by way of reservation out of the subject-matter of the gift, but that " any benefit to him by contract or otherwise will suffice to bring the case within the enactment " (*per* Lopes, L.J.). But the benefit, in whatever manner created, must at least be one conferred on the donor by a transaction of which the gift itself is a part. Some support for this view can be found in *Munro* v. *Commissioners of Stamp Duties,* [1934] A. C. 61. There the Judicial Committee had to construe a section of the New South Wales Stamp Duties Act, 1920—1931, which is substantially a reproduction of section 38 (2) Customs and Inland Revenue Act, 1881, as amended by section 11 (1) Customs and Inland Revenue Act, 1889. It was held that " the benefit which the donor had as a member of the partnership in the right to which the gift was subject was not in their Lordships' opinion a benefit referable in any way to the gift . . . and was not therefore such a benefit as is contemplated by (the Australian Revenue statute) ". It is submitted that an interest in the settled fund acquired by the life tenant from the reversioner subsequently to the surrender or determination of the life interest is not a benefit " referable " in any way to the disposition or determination of that interest, and is therefore not a benefit contemplated by section 43 (2), F. A., 1940. The true effect of the sub-section cannot be stated more accurately than by quoting the note to section 43 in *Halsbury's Statutes,* continuation volume, 1940, p. 112 : " Cases of *bona fide* surrenders are, however, protected by sub-section (2), whereby surrenders of life interests will continue to be recognised for estate duty purposes if, and only if, they take place more than three years before the life tenant's death and the life tenant thereafter *retained* no interest in the property transferred ". In other words, once it is established that the surrender or determination of the life interest is the result of an " out and out " transaction whereby no benefit is retained by the life tenant, the protection of sub-section (2) operates and is not withdrawn by reason of the fact that the life tenant thereafter acquires an interest in the settled fund from the reversioner. It may be contended that this construction opens the door to the avoidance of estate duty and thus nullifies the intended effect of sub-section (2), which is to prevent such avoidance. But it must be borne in mind that, in order to bring a transaction within the exception of the sub-section, the subject must show that the conditions of the sub-section are fulfilled. This means that the burden is on him to prove, first of all, that possession and enjoyment of the property was

assumed by the reversioner *bona fide*, before the further question is examined whether any benefit was reserved. Thus, where the reversioner resettles the property on the life tenant immediately after the surrender or determination of the life interest "the inference would be that the transaction was not *bona fide*, and that possession and enjoyment so assumed were not *bona fide* assumed—in other words, that the arrangement was a sham" (*per* Hamilton, J., in *Attorney-General* v. *Seccombe*, *supra*). But take, on the other hand, the case of a reversioner dying intestate, the reversion devolving on the life tenant. Surely, no question of avoidance of duty can possibly arise.

Yet another aspect of sub-section (2) remains to be considered. The view has been expressed that on the facts of *Attorney-General* v. *Llewelyn*, *supra*, the sub-section does not apply at all, and estate duty is chargeable on the whole settled fund, whenever a division between tenant for life and remainderman takes place. The life tenant, so it is argued, obtains part of the fund in exchange for the surrender of his life interest in part of the fund and is thus not excluded from all interest in the fund. This reasoning seems to be based on a fallacy. The benefit which the life tenant obtains is the value for which the life interest is surrendered. The fact that the life interest is disposed of for value does not take the transaction out of sub-section (2); for the sub-section is, on the express terms of sub-section (1), applicable whether the disposition is for value or not. The value received for the disposition or determination is therefore not a "benefit" within the meaning of sub-section (2). Put in another way, an "out and out" surrender or determination of a life interest does not lose its nature as an "out and out" transaction for the reason only that value has been given by the reversioner. On this point the writer has the support of Dymond, p. 33.

To sum up, the general effect of section 43, F. A., 1940, on the breaking of settlements is to reproduce section 11, F. A., 1900, and to extend its scope to all cases where a life interest is *defeated* for any reason. The fear that the section has much wider implications does not appear to be borne out on a closer examination of the Act.

SIR WILLIAM BLACKSTONE.

Many of those who read these notes will be or will have been familiar with "Stephen"—founded, as we were told, upon Blackstone's Commentaries. It is possible that not one lawyer in ten has purchased those Commentaries, or given more than a fleeting thought to that worthy lawyer whose volumes have for nearly two hundred years formed the groundwork of the legal education of budding lawyers.

What manner of man was this? Something of his life may be gleaned from the Preface to his Commentaries. The edition in the writer's possession is the 18th edition, published in 1829 by S. Sweet, 3 Chancery Lane; R. Pheney, 17 Fleet; A. Maxwell, 32, and Stevens & Sons, 39 Bell Yard. (Sweet, Maxwell and Stevens & Sons we know, but who was R. Pheney?)

The Preface, although conveying to the reader an outline of Blackstone's life, was not so considerable in length as to amount to a biography. But an American, Mr. Lewis Warden, has gathered together the materials, and has presented to American and English readers a Life of Blackstone written in attractive and picturesque language.*

Is it generally known that the Letters Patent of Precedent granted to Sir William Blackstone, when he became of King's Counsel in 1761, are now in Philadelphia with a collection of Blackstoniana, or that at the early age of thirty-seven Blackstone was offered Chief Justiceship of the Court of Common Pleas in what was then Ireland? Mr. Warden tells us that Blackstone declined the offer because he felt that it would be a "disgression". He had, says Mr. Warden, "no particular interest in the Irish and did not care to judge their disputes": surely a unique reason for refusing the office of Chief Justice!

Mr. Warden underlines throughout the work the purblind, if not completely blind, worship of the established rules of English law which Blackstone displayed.

One can readily imagine Blackstone repeating the somewhat conservative but decisive observation of the English Barons concerning the proposal (if our memory serves) that the rule once a mortgage always a mortgage should not necessarily apply to bastards (if we may put the matter in this way). Their remark was, it is understood, "Nolumus leges Angliæ mutare": in other words, the laws of England are good enough for us, and *must* therefore be good enough for bastards. Blackstone was of the same pattern. Woman upon marriage merged with her husband. "All of her personal property went over to her husband by the law of God as well as by the law of England."

Those who think that a Life of Blackstone is of necessity a dull work will abandon that view if they will but take up for a moment Mr. Warden's book, which displays that power of vivid description which seems to spring so readily to the pen of transatlantic writers. Do we not get in the following passage a vital picture of Blackstone? Formal, conservative and uncompromising with students, he remained the unbending professor when elevated to a Judgeship of the Court of Common Pleas.

> "The habit of mind", observes our chronicler, "which in private life produced in Blackstone almost an obsession for punctuality and formalism, made him, as a Judge, a strict observer of forms. . . . On *form* he was like the tanner who invited a supervisor to dine with him. After pushing the bottle about pretty freely" [we like this phrase] "the visitor took his leave, but in crossing the tanyard unfortunately fell into a vat, and called loudly for assistance. The tanner speedily ascertained his friend's situation, but declined interfering. 'For', he observed, 'if I draw a *hide* without giving twelve hours' notice I shall be exchequered' [presumably 'dismissed'']; but I will go and inform the Excise man'. This man would have allowed his friend to die before departing from 'form'. And Blackstone

* *The Life of Blackstone.* By LEWIS C. WARDEN, A.B., LL.B. Obtainable from Sweet & Maxwell, Ltd., 2 & 3 Chancery Lane, W.C.2. (£1 1*s.* net.)

as a Judge refused to disobey the established form, no matter how minute, regardless of the thing at stake.

"Blackstone would not have consented, even if he had been able, to make and modify the law, as did his contemporary Lord Mansfield."

It is evident that Blackstone was not cast in the mould of a reformer. Though the time was ripe for changes in the law, beset as it was by fictions and formalism, Blackstone had not the temper or spirit of a Mansfield. Lord Justice MacKinnon, in more polished terms, has said of this great lawyer, (but not so great Judge), "Throughout his pages the existing fabric of the law is belauded as the last achievement of human wisdom, beyond the possibility of criticism or improvement".

It appears that the compilation of the Commentaries occupied some fourteen years of Blackstone's life. Lord Ellenborough is reputed to have said, "Blackstone when he compiled his lectures, was comparatively an ignorant man. . . . It might be said of him, at the time he was composing his book, that it was not so much his learning that made the book as it was the book that made him learned."

It must be admitted that some of Mr. Warden's observations have a somewhat naïve ring. Thus, we are not quite sure whether to smile or to sympathise with Blackstone when he remarks that "Blackstone searched for the law here, and he searched for it there, and many times he couldn't find it anywhere". However, we appreciate to the full that this is often the lot of the practitioner, and decide both to sympathise *and* to smile.

It may be painful to those whose bump of veneration for "Coke upon Littleton" is well developed to know that Dr. Johnson, who thought well of Blackstone's work, remarked of Sir Edward Coke's book (generally referred to somewhat irrelevantly as "Co. Litt.") that it was the worst monstrosity in English literature. In that delightful work A'Beckett's *Comic Blackstone*, it is said that "a bushel of *Coke* added to a *Little Ton* was enough to put out the fire and extinguish the light". Small wonder, therefore, that the ordered treatise which Blackstone prepared was welcomed even by the fiercest of Blackstone's critics. With those we may well class Jeremy Bentham, who condemned its teachings concerning the theory of Government, and in the same breath praised the form in which those teachings were presented. "Correct, elegant, unembarrassed, ornamental; the style is such as could scarce fail to recommend a work *still more vicious* in point of matter to the multitudes of readers"; and much more to the same effect. This passage must rank high amongst examples of epigrammatic utterances. The "vicious" matter of which Bentham complained consisted of the section of the Commentaries dealing with the theory of Government.

We cannot deny the polish of Blackstone's style; but we can hardly fail to perceive its unrelieved formality, its lack of enlivenment, and even its ingenuity. Which of us can read with an entirely serious countenance that "A law of Henry the Eighth made it treason also for any woman, who was not a virgin, to marry the King without

informing him thereof: but this law was soon after repealed, it trespassing too strongly as well on natural justice as female modesty". If one has glimpsed something of the nature of the man, it is easy to imagine Blackstone purveying this information to his students in the most solemn of tones. But in sooth and in truth this observation is a piece of unblushing "poppycock". When Henry VIII, tiring of Catherine Howard, decided, as we may suppose, to "ha' done with this wench", the necessary Act of Attainder was passed, not to make the punishment fit the crime but with the express purpose of creating the crime and convicting the accused *uno ictu*. That done, the Act of Attainder had served its purpose: well might it be repealed "soon after".

Maitland, speaking of Acts of Attainder or "pains and penalties", says that such Acts "are Statutes—Acts of Parliament for putting a man to death, or otherwise punishing him without any trial at all". That is more probably the truth of the thing. According to Blackstone, however, no flaw could be found in the laws of England. Wrong they might have been in earlier times, but all that was bad had given place, he thought, to the best of possible laws in the best of possible lands.

A rather ingenuous observation of Blackstone is to be found in his account of the perquisites of the Queen's wardrobe. Says Blackstone, "On the taking of a whale on the coasts, which is a royal fish, it shall be divided between the King and Queen; the head only being the King's property, and the *tail* the Queen's . . . The result of this whimsical division, assigned by our ancient records, was to furnish the Queen's wardrobe with *whalebone*". This is, in very sooth, whimsical. Whalebone is a horny elastic substance which grows in place of teeth in the *upper jaw* of a certain family of whales. Whilst its sting *might* be in its tail it is hard to see how its upper jaw could be found in that extremity of its anatomy. It would seem that the King must have said, "Heads I win, tails you lose". And such an observation by Henry the Eighth might well have been charged with a rather sinister meaning—for if history does not lie it is clear that many of his consorts *did* lose—their heads!

Blackstone, though a great lawyer, can hardly be considered a great Judge or even a great man. Reading his life one wonders what it was that was lacking. Whilst he became in his forty-seventh year a Judge of the Court of Common Pleas, it appears that he was not considered to be entirely suited to judicial office. Formality, conservatism, and academic teachings held him in thrall, when elasticity of mind and human understanding were required. Nevertheless, lawyers may well respect his labours and his advancement of the study of law. It seems, too, that he endeavoured to ameliorate the conditions in prison, which were apparently extremely bad at that time. He was not without humanity but the personal touch was lacking. Search through history as one may, it will indeed be difficult to find any great man, (with the exception of great villains—and not all of them!), who had not a human appeal. Men of feeling were these great men—good feeling, bigoted feeling, passionate obsession, even weakness. But look though we may into the records

of the life of Blackstone, we do not seem to find that essential human touch (or even human weakness).

We took up Mr. Warden's account of Blackstone's life doubtfully, not expecting to find in it a great deal of interesting matter. We were mistaken. A forthright personal touch and a lively spirit animate the work; and these qualities and its richness in anecdote and word pictures make it eminently readable, whether by lawyer or layman.

APPOINTMENTS OF NEW TRUSTEES OF LAND.

Some Pitfalls.

Among the many alterations with a view to shortening titles made by the 1925 Legislation some of those most frequently disregarded are the provisions governing appointments of new trustees. This is due no doubt to the fact that the changes were procedural, involving no major alteration of principle. The tendency is aggravated by the fact that the primary rules are in the Trustee Act, 1925, and some procedural rules in the Settled Land Act, 1925. All through the Settled Land Act has proved one of the problems of this legislation for the practitioner because "settled land" has ceased to be a matter of large landed estates and it has become a common occurrence for practitioners to seek to evade the Act by leaving the estate in personal representatives or by some other device to render a vesting instrument unnecessary.

Strictly speaking the problem of appointing new trustees of land falls into four groups: (i) trustees of settled land; (ii) trustees for sale; (iii) bare trustees; and (iv) trustees of land held upon charitable trusts. It is with the first two classes that we are here mainly concerned.

(i) Settled Land Trustees.

Appointments of new trustees of settled land are governed in the first place by the Trustee Act, 1925, s. 36. The person having power to appoint new trustees is the person nominated for the purpose by the trust instrument or, if none, then the surviving trustees or trustee. One point seems to have been overlooked. There are a number of cases in which property may be held on trust to create a settlement where the instrument creating this state of affairs does not directly or indirectly provide for trustees for the purposes of the Settled Land Act.

For example, if land is conveyed to an infant the effect is that the grantor holds it upon trust as settled land and subject to a binding contract to create a settlement: Settled Land Act, 1925, s. 27. It is submitted that, although the grantor is a trustee, he is not a trustee for the purposes of the Settled Land Act, 1925; see section 30—33. Therefore he cannot appoint trustees for that purpose under the Trustee Act. Whether his obligation to create a settlement gives him power to do so remains to be decided. A purchaser will not, of course,

be affected in this case by reason of section 110 of the Settled Land Act, once the settlement has been created, but in cases falling within section 9 of the Act, dealing with informal settlements, the trust instrument will be on the title.

However, assuming the ordinary case, an appointment made under the Trustee Act, 1925, primarily concerns only the trust instrument. It appears not to affect the legal estate and it must not be brought on the title. It is for this reason that the person entitled to appoint new trustees must be named in the vesting instrument. When the appointment has been made it is then necessary in order to complete the title to the legal estate to execute a Deed of Declaration declaring that the appointment has been made (S. L. A., s. 35). This deed must be executed by the person nominated in the vesting instrument as having the power to appoint new trustees and by the trustees. It is surprising how often this Deed of Declaration is overlooked. It seems perfectly plain that until this deed is executed any capital money must be paid to the trustees who were trustees prior to the appointment of new trustees, and presumably notice, etc., to constitute a valid transaction must be given to them.

It is one of the annoying peculiarities of the Settled Land Act that in several cases where procedural rules are incorporated, it is by no means clear what is the effect of failing to comply with them. The case of section 35 is probably the most annoying of all. The word used is " shall ", so that there is no question that the rule is intended to be obligatory. On the other hand the Court may well boggle at declining to uphold a title on the ground that the trustees were the trustees of the trust instrument but not of the legal estate by virtue of section 35.

But the rules of the section are not complied with simply by a Deed of Declaration. This deed must (a) be expressed to be supplemental to the last or only principal vesting instrument; and (b) have a note of it endorsed on the last or only principal vesting instrument. Both these rules present a problem. It is remarkable how often the endorsement is not made.

Apparently a Deed of Declaration not expressed to be supplemental or not expressed to be supplemental to the correct vesting instrument would be invalid. Sometimes there is doubt about the correctness of a vesting instrument, as when it has been executed by the wrong trustees : *Re Cayley & Evans' Contract*, [1930] 2 Ch. 143; or has been executed by trustees when it should have been executed by the estate owner; or has been executed by the estate owner when it should be executed by the trustees as, for example, under the Settled Land Act, s. 9. If the principal vesting deed is invalid, it would seem to follow that any Deed of Declaration expressed to be supplemental must equally be invalid, because it cannot be expressed to be supplemental to the last principal vesting instrument if in fact the purported instrument was invalid as a vesting instrument.

The ramifications of this problem go further. Let us assume that in 1927 an invalid vesting instrument was executed, at which time X and Y were trustees; in 1929 a Deed of Declaration appointing Z in the place of X was expressed to be made supplemental to the 1927 deed; in 1933, the invalidity of the vesting instrument having been discovered,

a fresh vesting instrument is executed in which Y and Z are declared to be the trustees. In 1937 part of the property is sold to A who pays the purchase money to Y and Z. In 1944 A contracts to sell to B. What is B's position?

So far as the legal estate is concerned it would *appear* that in 1937 the trustees would still be X and Y because the Deed of Declaration was invalid as being expressed to be supplemental to an invalid vesting instrument. The vesting instrument of 1933 would also appear to be invalid, because the purchaser would have notice that the 1927 deed was invalid (otherwise it would not be invalid), and consequently the purchaser would have notice that the 1929 deed was invalid and that therefore the wrong trustees were expressed to be trustees. Therefore, as the purchaser would have notice outside the trust instrument that the statement that Y and Z were trustees was wrong, presumably the conveyance to him would be void under section 18 of the Settled Land Act.

The view, which has just been expressed, is not free from doubt. Under section 110 (2) a purchaser is not entitled to inspect the trust instrument, and whether or not he does he is "bound and entitled if the last or only principal vesting instrument contains the statements and particulars required by this Act to assume that—. . . (b) the persons by the said instrument stated to be the trustees of the settlement or their successors appearing to be duly appointed are properly constituted trustees of the settlement; . . . (d) the statements contained in any deed executed in accordance with this Act declaring who are the trustees of the settlement for the purposes of this Act are correct. . . ."

If this sub-section is to be taken literally a purchaser need not examine the title at all from the point of view of the machinery of the Settled Land Act except to see that it contains some statements, no matter how wild, which correspond with the particulars required by the Act. It is thought, however, that the sub-section will be construed by reference only to errors which would have been disclosed upon an investigation of the trust instrument or title derived under it. Errors, which appear upon the legal title, would probably be held not to be protected by the section. This would be in conformity with the decision on section 5 (3) which states baldly that a vesting instrument shall not to be invalidated by reason only of any error in "any of the statements or particulars by this Act required to be contained therein", but where the Court held that an error in naming the trustees invalidated the deed: *Re Cayley & Evans' Contract*, [1930] 2 Ch. 143; though a mere misdescription in naming the correct trustees would be immaterial: *Re Curwen*, [1931] 2 Ch. 341. It should, however, be pointed out that to express a deed to be supplemental to an instrument which is invalid seems a minor defect compared with misnaming the trustees.

The other requirement of the Act most frequently omitted is that of endorsing a note on the principal vesting deed. The Act makes no requirement in point of time, so that *prima facie* an endorsement made at any time will be sufficient. What, however, will be the effect of a conveyance made by the estate owner and capital moneys paid to the trustees named in the Deed of Declaration prior to an endorsement

on the principal vesting deed? *Prima facie* such a conveyance is void under section 18 of the Settled Land Act. Consequently, a subsequent endorsement could not, presumably, render the conveyance valid. On the other hand there is no provision requiring that the date of the endorsement shall be noted on the endorsement. Such a defect on title is contrary to the spirit of the provisions of the whole Property Legislation of 1925. We can, therefore, only say that in the absence of authority the position is wholly uncertain.

The result of these somewhat inconclusive observations is to emphasise the importance of regularity in observing the provisions of section 35 of the Settled Land Act to the letter. Attention should, therefore, be called to section 35 (2) of the Trustee Act, 1925, which appears to govern the character of the endorsement of the Deed of Declaration which should be made. This sub-section requires that the names and *addresses* of the trustees for the purposes of the Settled Land Act should be endorsed on or annexed to the principal vesting instrument: see the form given in 1 K. & E. (14th ed.), p. 195. A memorandum in this form clearly covers all the points raised in this article.

It is convenient to observe here that most of the points mentioned equally concerns the discharge of a trustee when no new trustee is appointed: Settled Land Act, 1925, s. 35.

(ii) Trusts for Sale.

Trusts for sale present even more common problems. Although a trust for sale should be created by two documents this is not obligatory. In section 35 of the Trustee Act, 1925, it is assumed that this method of settlement has been adopted. Where it has, appointments of new trustees must be made by separate instruments, subject to any order of the Court to the contrary. Although the appointments are to be in separate instruments they shall secure that the same persons shall become the trustees on the conveyance on trust for sale as become the trustees of the settlement of the proceeds of sale. There is nothing in the section which protects a purchaser from seeing that the trustees are in fact the same notwithstanding that a purchaser is not concerned with the trusts of the proceeds of sale: Law of Property Act, 1925, s. 2 (1). Nor is there any provision covering the results of failure to have separate instruments, but presumably again a purchaser is concerned to see that such instruments exist. It is strange that these matters should have been omitted.

It is, then, provided that a memorandum shall be endorsed on or annexed to the conveyance on trust for sale of the appointment of new trustees by or on behalf of the trustees. This endorsement is most frequently overlooked, but it seems to be in exactly the same position as that of the endorsement of a Deed of Declaration under the Settled Land Act. It is, therefore, important to see that the Act (section 35 (3)) is complied with, though it is noteworthy that there are no analogous formalities such as making the instrument supplemental to the conveyance on trust for sale.

On the other hand it would appear that section 35 (3) applies whether or not the appointment is required to be made by separate

instruments. So, if the trust for sale is created by a single instrument and consequently the appointment of new trustees is by a single instrument the memorandum is still required to be endorsed.

Probably the commonest case in which a trust for sale appears in two instruments occurs under a will. Here, so soon as assent to the trustees on trust for sale is made, the assent becomes a separate conveyance on trust for sale and appointments of new trustees will require to be made by separate instruments. That is, the appointment should be made to the trusts of the will followed by an appointment on the trusts of the assent on trust for sale: see Prec. XI and XII in 1 K. & E., pp. 165, 167. This should be followed by a memorandum of the appointment endorsed on the assent: see Prec. XXXV in 1 K. & E., p. 195.

It may be noted at once that these provisions only relate to appointments of new trustees of land. It is also to be observed that no provision is made to deal with the failure to comply with these provisions. In default of a decision it must be assumed that there is a defect in the title. This defect will, presumably, be serious if the appointment of new trustees relies for the vesting of the legal estate on the implied vesting declaration: Trustee Act, 1925, s. 40. It is thought that, unless there is a regular appointment of new trustees, the legal estate cannot vest under the appointment of new trustees, consequently no title can be derived through the new trustees. Of course, in the case of mortgages, these must in any event be transferred by the old trustees to the new trustees, so that in this case the difficulty will probably be small or non-existent: cf. Trustee Act, 1925, s. 40 (3). It may be convenient to note here that a note of a Deed of Discharge of a trustee under the Trustee Act, 1925, s. 39, does not require to be endorsed on the conveyance to the trustees for sale, no doubt because this does not weaken the title of the existing trustees. Likewise it does not require to be made by two deeds, although clearly it must form a link in the title.

The law relating to appointments of new trustees to personalty settlements is less complicated because in practice most personalty has to be transferred to the trustees by some separate instrument. The rules exist to prevent the legal and equitable title to land from overlapping. Unfortunately, while they may simplify abstracts of title they do undoubtedly complicate the conveyancing that goes to make up the abstract. The complication is undoubtedly enhanced by the failure to state explicitly the effect of failure to comply with the rules laid down.

(iii) Charitable Trusts.

The law governing trustees of a charity may be complicated because of special statutes, but there are other complications which arise from the character of the provisions in the trust instrument We can here only offer a few observations that may assist practitioners.

One provision, frequently not observed, goes to the root of the problem. The Settled Land Act, 1925, s. 29 (1) provides (*inter alia*) that any conveyance of land held on charitable, ecclesiastical or public trusts "shall state that the land is held on such trusts" and then goes

on to provide that where a purchaser has notice that the land is held on such trusts he is bound to see that appropriate consents shall be obtained. It is not provided what will be the effect of failing to disclose the trusts, as not infrequently happens. Conveyance includes assent where the land is devised by will.

In section 36 of the Trustee Act, 1925, new trustees may be appointed in writing by the persons named in the trusts as having power to make the appointment. It is only if there are no such persons or no such persons able and willing to act that the surviving trustees may appoint under this section. It is not uncommon in charitable trusts to find that the trust instrument (of which it will be observed the purchaser should have notice) provides a complicated method of appointing new trustees, such as election by a church meeting or some other unincorporated body of persons. It is thought that in such cases an appointment made under the Trustee Act would be invalid. Unless a statute enables the appointment to operate as a transfer of the legal estate, as under Peto's Act, the legal estate will have to be transferred by proper conveyance from the surviving trustees to the new trustees. To this may be added complications, where it is intended that a corporation should become trustee, to ensure that the corporation both has a licence in mortmain and has power to hold land on charitable trusts.

It is not possible to deal adequately with charity trustees, because various statutory provisions apply to different classes of charity. To the warning we have uttered above we can only add the desirability of examining each case with care. There is, however, one other point to notice. Land held on a charitable trust is not settled land as such: *Re Booth and the Southend Estates Co.*, [1927] 1 Ch. 579; nor need it be held on trust for sale, so that the rules about deeds of declaration of new trustees and discharge under the Settled Land Act, 1925, s. 35, and the Trustee Act, 1925, s. 35, do not appear to apply where no trust for sale is created.

H. P.

A HOUSING ACT ANOMALY.

By E. O. Walford, LL.D., Solicitor.

One would suppose that the Legislature would take care that a statutory provision which is intended to operate notwithstanding any stipulation to the contrary was framed in a very clear manner, and did not extend beyond the mischief with which it was intended to deal. However, we recently had the sad spectacle of a Bill which defined a weekly tenancy as a tenancy where the rent is paid weekly (*a*), although persons with practical knowledge are well aware that many tenants from year to year or for a term of years pay rent weekly.

Perhaps, therefore, we ought not to be surprised to find that the thought of the Legislature as to the meaning of a " small " house is that it is a house which is let at a small rent! Before particularising I must dispose of a preliminary point.

(*a*) See the first draft of the Landlord and Tenant (Requisitioned Land) Bill, 1942.

MARGINAL NOTES AND HEADINGS.

The marginal note to section 2 of the Housing Act, 1936, is "Conditions to be implied on the letting of small houses". The section itself merely deals with lettings *at a small rent*. It appears to me that the words of Greene, M.R., in *Allchin* v. *Coulthard*, [1942] 2 A. E. R. 39, concerning a marginal note in another statute, are applicable. Stating that he could not attach to the marginal note the importance that counsel had suggested Lord Greene added, "It is in fact a misdescription of the section". So is the marginal note to the section which I have cited above. It is true that the section also has a heading "Obligation of Lessors of Small Houses"; but it is settled law that even a heading cannot control the clear meaning of the section: *Hammersmith and City Ry.* v. *Brand* (1869), L. R. 4 H. L., at p. 216; see more fully on this point Burrows' *Interpretation of Documents*, at p. 90, and the concluding portion of this article.

STATUTORY OBLIGATIONS.

Section 2 (1) of the Housing Act, 1936, provides that in any contract for letting for human habitation a house at a rent not exceeding—(a) if the house is in the administrative county of London, £40; (b) if the house is situate elsewhere, £26—there shall be implied a condition that the house is, at the commencement of the tenancy, and an undertaking that it will be kept by the landlord "in all respects reasonably fit for human habitation".

The sub-section applies notwithstanding any stipulation to the contrary. However, it does not apply in the case of a letting for three years or more *if* the tenant undertakes to put the house into a condition reasonably fit for human habitation, *and* "the lease is not determinable at the option of either party before the expiration of three years".

In passing, I may observe that the concluding words are very ambiguous. They may mean what they say, namely, "either party", which is understood by conveyancers to refer to cases in which both parties have the right to determine the lease. On the other hand the intention may be "not determinable (whether by the lessor or the lessee)". I must leave readers to surmise, as I am concerned with more general questions.

GROUND RENT LEASES INCLUDED.

Although one can hardly suppose that the Legislature intended that the sub-section above mentioned should apply to cases in which a ninety-nine years lease of a newly completed house is granted at a ground rent, I see nothing whatever to take such terms outside the Act even if, as is usual, a very substantial premium is paid by the lessee. I admit that such a result would be surprising; but surprising results are to be expected if surprising phraseology is employed by the Legislature. The words of the Act are clear, and it would be only by doing violence to them that the Court could treat any cash consideration paid by the lessee as reducible to rent. What violence any given Judge would be prepared to do to the plain words of the

sub-section it is useless to guess. Some Judges are more "violent" than others in the pursuit of those wills-of-the-wisp, "substantial justice" and "the equity of the statute".

An Absurdity.

To take another example, is it not absurd, if I wish to let a small cottage in the country to a friend at ten shillings per week upon the footing that the tenancy is to be from year to year, and that my friend, though not bound to do any repairs at the moment, shall effect any running repairs, that the law should forbid me to do so but should allow me to let the property on such terms if the tenancy is for at least three years *and* my friend undertakes to put the property into repair? Obviously it may be in good repair already, and it would then be absurd to require the lessee to put it into a condition reasonably fit for habitation, even if I were prepared to let it for three years, which I am not. Again, a bargain may be made in respect of say a large country house under which a substantial premium is paid and a small rent of say £20 per year is payable, the letting being for say seven years, the lessee undertaking to keep the house in repair, it being in good and tenantable condition at the time of the letting. Nevertheless, the lessor will be obliged to effect all repairs necessary for keeping the property fit for habitation, because the lessee's undertaking is void in so far as it purports to relieve the landlord of that obligation. If it is argued that the Court would possibly do violence to the sub-section and decide that it was not intended to apply to such a case, I can only say that the words of the sub-section do not limit its application to small houses or so define rent as to reduce a premium to its annual equivalent in rent. Nor would the Court find it easy to supply its own definition of "a small house"! One more example may be taken. A has a small country house which he sells to B at £1,800. It is part of the arrangement that B shall let to A for five years some rooms in the house, as A wishes to use those rooms at week-ends. A is to pay £25 a year and is to keep the property, as it is at present, in good repair. The purchase is completed, and the lease is granted. B then finds that A's undertaking to repair is invalid and B must do the repairs himself.

It would seem that the object of the Legislature was to protect persons who normally occupy small houses on short-term tenancies and who do not pay premiums. In fact, owing to the failure to keep in view what was intended and to refrain from any unnecessary interference with freedom of contract, the Legislature has produced a ridiculous result.

As the figures of £40 for London and £26 outside London are now definitely too low, possibly the Legislature might be persuaded—when the very necessary amendments of the Rent Acts take place—to reframe this section so as to give effect to the true intention—whatever it may have been. Incidentally, if any reader is sufficiently interested to examine Hansard and to report as to the expressed intention when the clause was introduced (in the Housing Bill, 1925, from which it is substantially reproduced in the 1936 Act), I should be glad to receive the report. But I would remind readers that if the

words of a statute differ from the expressed intention of its promoters the inference—or fiction, if you will—is that the difference is intentional: see *Salkeld* v. *Johnson* (1846), 2 C. B., at p. 757, and the recent case of *Liversidge* v. *Anderson*, [1941] 3 A. E. R. 338. On the continent the interpretation of statutes with the assistance of contemporaneous statements is much in favour; but in England the Judges have taken a firm stand against the introduction of extraneous matter of this kind. Thus, the Court is able with the minimum of trouble so to interpret any section of a statute as to give to the errors which it contains the maximum effect whilst firmly shutting its eyes to any official information which it might glean from other sources. I need hardly say that this rule has not found favour with all Judges, but it is nevertheless regarded as settled law. In *Vacher* v. *London Society of Compositors*, [1913] A. C. 107, the House of Lords approved the judgment of Kennedy, L.J., in the Court of Appeal, in the course of which he had observed, " I decline to speculate in regard to any statutory enactment which it becomes my duty to interpret as to what was the policy to which the Legislature thought it was giving the effect of law ".

I have already observed that marginal notes and headings do not control the meaning of clear words. I may add that in *Carlaw* (*David*) *& Sons, Ltd.* v. *I. R. C.* (1926), 11 Tax Cas. 96, it was held that the introductory words to a section, though indicating its intention, did not control the meaning of the words employed in the section. I have concluded this article with these remarks because it may well be thought by some that the strange effects of the subsection to which I have referred may be avoided by benevolent construction. There is, unfortunately, no sufficient justification for such a view.

NOTES OF RECENT CASES.

1. *CONVEYANCING AND REAL PROPERTY CASES.*

Sale of land—postponement of completion—payment of interest on purchase price—Re Debenham and Mercer's Contract, 113 L. J. Ch. 83, deals with a short point of some practical importance. The contract was expressed to be subject to the Law Society's Conditions of Sale, but the clause dealing with the payment of the price stated that it was to be paid on a certain date (or earlier completion if possible) and if not so paid was to carry interest at 5 per cent. until payment. The price was not paid on the due date and the summons claimed that it carried interest at 5 per cent., whether or not the delay in completion was due to the vendor's default, notwithstanding clause 7 of the General Conditions of Sale. Simonds, J., held that the express clause in the contract was not inconsistent with clause 7. He said (at p. 84): " I cannot but think that if the parties, having in mind the Law Society's Conditions (as I must assume they had since they incorporated them), had intended to exclude from their bargain the special provisions of clause 7, they would have dealt with that in a manner much more clear than simply by the statement that the interest was to be paid at a certain rate ". He consequently held that the express clause amounted to nothing but fixing the rate of interest to be payable under clause 7.

In considering this decision of the learned Judge we should bear in mind that clause 7 itself provides that the rate of interest on the purchase money shall be 5 per cent. In effect, therefore, the express clause so far as it concerned the interest payable on the purchase price added nothing to the contract. This cannot normally be the effect of the addition of a clause, but obviously each case is a question on the construction of the document as a whole.

Perhaps even more important than the actual decision was the fact that the learned Judge pointed out that the parties must be deemed to have in mind the whole of the printed clauses which they had incorporated. It has become the common practice to make contracts subject to general conditions of sale, but these printed clauses are so voluminous that it is doubtful whether practitioners carry them all in their head. Any additional clauses should, therefore, be added only after a scrutiny of the general conditions to ensure either that unnecessary words are not added, as would seem to be the fact in the instant case, or that if changes are intended that the clause should be referred to by some such phrase as " and clause — of the General Conditions shall be construed accordingly ". Such wording would then make it more certain that an alteration was intended.

(1 K. & E., p. 329, n. (*k*).)

Settlement — loss of material document — payment out of Court.—In *Hansell* v. *Spink,* 113 L. J. Ch. 49, under a marriage settlement made in 1873, the income was payable to X for life with remainder over and the money was paid into Court. The document was lost, and the Court accepted as secondary evidence of its contents the note of the chief clerk made at the time when the money was paid into Court. X had died and the only child of the marriage claimed payment out of the fund.

In *Perch* v. *Robertson* (1943), 87 S. J. 66, Uthwatt, J., had refused to make an order that funds were held upon trusts of a settlement in accord-

ance with a recital in a will, the settlement being destroyed by enemy action, on the ground that he would be binding possible beneficiaries not before the Court. The learned Judge simply ordered that the trustees should be at liberty to carry out such trusts until further order, following the rule in *Re Benjamin,* [1902] 1 Ch. 723, which protects trustees without making any positive order affecting or declaring rights. In this case the tenant for life was still alive. In *Hansell* v. *Spink* (*supra*) the question was the distribution of the capital fund but it was in Court. In those circumstances the Court had to take the responsibility of declaring rights and Morton, J., held that as the evidence was stronger than in *Perch* v. *Robertson* (*supra*) he was satisfied in directing the money to be paid out to the applicant.

Protective trusts—extent of forfeiture—resident in enemy country.— Two more cases on protective trusts, *Re Wittke,* [1944] 1 A. E. R. 383, and *Re Furness,* [1944] 1 A. E. R. 575, have arisen out of beneficiaries being resident in France after German occupation, but both cases have more general interest.

In *Re Wittke* (*supra*) a testatrix directed her trustees to hold the residue on trust " as to the income thereof upon protective trusts for the benefit of my sister . . . and subject thereto upon trust to pay the capital and income to " a named beneficiary. The sister was married but had no children, and she and her husband were at the time of the summons resident in France. Vaisey, J., held that (i) " protective trusts " meant the protective trusts contained in the Trustee Act, 1925, s. 33; (ii) the absence of any words limiting the payment of the income to the life of the beneficiary did not exclude section 33 and the gift must be construed as one for life, but this interpretation was aided by a proviso enabling the trustees to pay capital as well as income to the beneficiary; (iii) there was a forfeiture of the life interest (cp. *Re Hall,* 113 L. J. Ch. 76, noted *ante,* p. 167), but the discretion could only be exercised under the section in favour of the lady and her husband, both resident in France; (iv) the income was, therefore, payable to the Custodian Trustee (see *Re Gourju,* [1943] Ch. 24, *ante,* vol. 7, p. 206).

In connection with his discussion whether or not the beneficiary took a life interest the learned Judge observed: " People who refer to those statutory provisions which are designed to be incorporated in wills ought to do so with care ". While it might be unreasonable to anticipate a world war having a consequential effect upon these provisions it is necessary to observe precisely the persons capable of taking a benefit. It is equally necessary to be sure that the provisions can be applied. There remains much to be said for the straightforward discretionary trust clearly set out in the settlement, but if this is adopted it is equally imperative to make it quite clear in what circumstances the forfeiture will operate to bring the discretionary trust into play. This was illustrated in *Re Furness* (*supra*). Here the annuity was determinable on an " act or event . . . without the consent in writing of the covenantor or his personal representatives whereby [the annuity] if belonging absolutely to [the beneficiary] would have become vested in or payable to or charged in favour of some other person or persons or a corporation ". The annuitant was in 1940 resident in France. The Court of Appeal held that the annuity did not determine by reason of the fact that the annuity became payable to the Custodian of Enemy Property. The reasons given by Lord Greene, M.R., were based on the construction of the forfeiture clause which referred to acts without written consent. Obviously there was no possibility of consent in this case and the Court of Appeal upheld the construction of Farwell, J., that there was only a limited class

of events to which the forfeiture could apply and that this was not one of them.

In the course of argument it was pressed that such a construction would also exclude bankruptcy, which obviously would not have been intended by the settlor. On this point the Court declined to express any opinion, but did say that a somewhat different attitude should be adopted towards forfeiture clauses than to the ordinary construction of wills. In construing wills a general approach is based on what sort of provision a reasonable testator might be expected to make, but " when one is considering a forfeiture clause, the precise scope of which must always be a matter of taste or even caprice on the part of the testator, and in regard to which no preconceived ideas as to his probable intentions can have any application, it seems to me that one must not approach it in that way " (*per* Greene, M.R., at p. 577).

Once again it becomes primarily a question of care in drafting. This involves imaginative foresight and some care, where any differences from common form are introduced, to see that, *e.g.*, bankruptcy may be omitted.

(2 K. & E., pp. 553, 554.)

Settlement—" die without leaving issue "—issue dying having attained a vested interest.—Where in a will a life interest is given to A followed by a gift to A's children, which may give them an absolute interest in A's lifetime, but this limitation is followed by a gift over simply in the terms: " if A dies without leaving children ", this gift over must be construed as a gift over only if A had died " without having had a child who had attained a vested interest ": *Re Cobbold,* [1903] 2 Ch. 299; *Re Dewey,* [1915] 1 Ch. 837. A similar limitation over " without leaving issue " was contained in a codicil to a will exercising a special power in *Re Milling's Settlement,* [1944] 1 A. E. R. 541. One daughter had taken a life interest and had had two sons both of whom had attained twenty-one and acquired a vested interest in default of appointment, but both died in the lifetime of their mother so that, unless the words " without leaving issue " could be extended as in the ordinary case of wills, their personal representative would take nothing at all.

Morton, J., held that the rule set out in *Re Cobbold* (*supra*) did not necessarily apply where the two interests were contained separately in a gift over in default of appointment and in a will exercising a power which ordinarily would override the gift over in default of appointment notwithstanding that the power was exercised by will. The learned Judge does not seem to have intended to say that the rule could not apply, but merely that he was not prepared to lay down this principle. On the particular facts he held that the words should be deemed to mean " without having had a child who attained a vested interest ".

It should be noted that the gift over in this case was made on failure of *issue*. The rule stated in *Re Cobbold* (*supra*) usually is stated by reference to the failure of *children*. Whether it should be stated in the wider terms remains to be seen.

Secondly, the fact that the children had attained twenty-one in the lifetime of their mother did not introduce section 134 of the Law of Property Act, 1925, which makes an interest absolute in such circumstances where there is an executory limitation over in default of issue. The essential point is, of course, that the "gift over " to defeat the rights of the parties on default of appointment was not an executory limitation over defeating the mother's estate, which determined naturally on her death. The interest under the will was in the nature of a contingent remainder in favour of specified daughters if they survived a sister who died without issue surviving

her—*or*, as it was held, without having had children who had attained a vested interest.

It may be convenient to remark that, had the daughters not been specified in the original settlement and so been lives in being for the purposes of the rule against perpetuities, the exercise of the special power would have been invalid for perpetuity, because the survivorship of the one over the other would have been a contingency too remote: *Re Legh*, [1938] Ch. 39.

Settlement—Settled Land Act, s. 64—maintaining mansion house.—In *Re Scarisbrook*, [1944] 1 A. E. R. 404, the question was whether the Court could authorise the raising of capital money for the purpose of maintaining the mansion house since the net income of the tenant for life was inadequate. It was admitted that the net income after the war was likely to be inadequate. The mansion house contained some valuable panelling, carving, etc., and was so large and expensive that it was not capable of being disposed of satisfactorily during the war. Part of the house had been let and the remainder was occupied by the tenant for life. The tenant for life had no children and had been married for a considerable period: subject to the possibility of a second marriage and children of it the tenant for life would be absolutely entitled to the property. In all these circumstances Cohen, J., held that he could authorise the mortgage.

This case does not seem to go any further than *Re White-Popham*, [1936] Ch. 725, but it was argued that the Settled Land, etc. (Court's General Powers) Act, 1943 (noted *ante*, p. 2), had by implication made it clear that such powers could only be authorised where necessary for management within section 102 of the Settled Land Act. The learned Judge held, however, that the 1943 Act could have no such restrictive interpretation put upon it since its purpose was to increase and not to diminish the powers of a tenant for life.

It is as well to insist that this case was a very strong one, since it seemed clear that the only beneficiaries under the settlement would undoubtedly benefit, while the premises would be maintained in case other beneficiaries came into existence. It should not be suggested, at any rate at this stage, that wherever a mansion house cannot be maintained out of current income recourse may be had to capital.

(2 K. & E., pp. 578, n. (*s*); 718.)

Rule in Shelley's Case—Law of Property Act, s. 131, excluded by construction excluding the rule.—After passing into temporary abeyance the rule in *Shelley's Case* has awakened out of slumber. In *Re Routledge*, [1942] Ch. 457 (noted *ante*, vol. 7, p. 101), the question arose on a will of a testator who died in 1874, but in *Re McElligott*, [1944] 1 A. E. R. 441, the testator made her will in 1936. This emphasises the point that we have made before: the rule in *Shelley's Case* is not really dead. Although the construction put upon a document by the rule in *Shelley's Case* has been repealed, the rule remains in order to determine the application of the statutory rule under the Law of Property Act, 1925, s. 131.

The testator gave the whole of his property as follows: "I direct that the balance of my estate and effects both real and personal whatsoever and wheresoever be given to my dear wife . . . and her heirs for her and their use and benefit absolutely and for ever". It was argued that this was a case to which the rule in *Shelley's Case* applied and that consequently the wife

took a life interest with remainder to the heir of the wife by purchase under the Law of Property Act, s. 131.

The suggestion that a limitation to A and his heirs operated to confer upon A the fee simple by virtue of the rule in *Shelley's Case* has been discussed recently(53 L. Q. R., p. 371; 54 L. Q. R., p. 70), and the discussion turned a good deal upon the origin of the rule and the effect of a statement in Fearne, *Contingent Remainders* (10th ed.), p. 77. Vaisey, J., expressed the view that he did not agree with the contention in Fearne, if Fearne really meant to say that. The learned Judge also took the view that the superadded words " for her and their own use and benefit " added nothing to the construction.

It is submitted that these expressions of opinion were really *obiter*, because the estate was simply personal estate, the rule in *Shelley's Case* did not apply to personal estate but only to realty, and, as the learned Judge held, a grant to A and his heirs would constitute an absolute interest in personalty: *Powell* v. *Boggis*, 35 Beav. 535; *Re Russell*, 52 L. T. 559. In fact the case does not really seem to turn very much upon *Shelley's Case*, though it is a useful expression of judicial opinion upon the suggestion that a grant to A and his heirs did fall within section 131. Its most useful point, perhaps, is to remind us that the rule has lost none of its ancient power, though it may result in a different construction.

(2 K. & E., pp. 714, 937 n. (*k*).)

Charity—purposes beneficial to the community.—The fourth head of the famous classification of charities in *Income Tax Commissioners* v, *Pemsell*, [1891] A. C. 531, namely, other charitable purposes beneficial to the community, seems likely to increase in importance as public activities tend to increase. It is a peculiarly difficult head to define since obviously every activity that is not anti-social has some claim to benefit the community.

In *Corporation of Foreign Bondholders* v. *I. R. Commissioners*, 113 L. J. Ch. 113, Macnaghten, J., held that a voluntary association to protect the rights of foreign bondholders which was incorporated in 1873 was not a charity. The function of the association was " to watch over and protect the rights and interests of holders of public securities wherever issued but especially of foreign and colonial securities issued in the United Kingdom ". The learned Judge distinguished *I. R. Commissioners* v. *Yorkshire Agricultural Society*, [1928] 1 K. B. 611, which conferred some benefits upon members but was primarily concerned with the advancement of agriculture throughout the country. He said: " In that case [*I. R. Commissioners* v. *Yorkshire Agricultural Society* (*supra*)] the primary object was the advancement of agriculture. In this case the primary object is that creditors in this country may get payment of their debts ".

In *Re Hillier*, [1944] 1 A. E. R. 480, the gift was that the proceeds of sale should " go to the sick and wounded ", and the question was whether a trust that might include the rich as well as the poor could be charitable in these circumstances. Vaisey, J., held that this was a charitable trust under the fourth head. " I think it is beneficial to the community because it provides for the relief of persons who need relief and to aid the helplessness of those who require and look for help from their fellow creatures." It is suggested that in these words the learned Judge did not primarily lay stress upon financial relief—indeed, it seems that he wished the converse. Earlier in his judgment he had pointed out that Lord Wrenbury had laid it down that in trusts for the advancement of education or religion poverty was not essential: *Verge* v. *Somerville*, [1924] A. C. 496. Bennett, J., had held that the maintenance of patients in two hospitals was good: *Re Roadley*,

[1930] 1 Ch. 524, on the ground that it was the relief of helplessness which aroused the compassion of mankind. In *Re Chaplin,* [1933] Ch. 115, Maugham, J., held that a home of rest for persons in need of rest by reason of strain and stress caused by the conditions in which they lived was charitable as alleviating the helplessness of persons in need of that particular kind of help. In *Re Osmund,* [1944] 1 A. E. R. 262 (noted *ante,* p. 168) where a gift for the furtherance of psychological healing was held to be charitable it is thought that much the same principle might be said to apply though the point was hardly discussed on these lines. It might be suggested that a trust for the relief of suffering generally and without regard to necessary poverty on the part of some beneficiaries might be regarded as charitable. Where, however, a purpose obviously including charitable purposes is desired, but doubt may exist whether expressed generally it is charitable, as, for example, a gift to a body which is directed to a variety of purposes the charitable nature of some of which is in doubt, it would seem desirable to make the gift in some such form as " to be devoted to such charitable purposes of the society as the trustees shall from time to time determine ". The use of such an expression would, no doubt, be objectionable if it were not for the special rules governing charitable trusts, on the ground that it may introduce uncertainty. But so long as the purposes are clearly charitable it would not appear that uncertainty can defeat the charitable intention. This has just been the subject of another case, noted hereunder, in which the position has been discussed again.

Charity—educational trust for students of " British and Christian parentage " — uncertainty — immaterial whether general or particular purpose—effect of trustees' discretion.—In *Re Gott,* [1944] 1 A. E. R. 293, the testator bequeathed a sum of money to Leeds University for the creation of a post-graduate scholarship under a scheme to be drawn up by the council of the University but limited to students " of British and Christian parentage ". It was contended that a gift limited to such a purpose must be uncertain, reliance being placed on *dicta* in *Clayton* v. *Ramsden,* [1943] A. C. 320 (see an article " Conditions in Restraint of Religion ", *ante,* p. 6, and postscript, p. 66, dealing with *Re Donn,* 113 L. J. Ch. 61). Counsel for the Attorney-General accepted this contention and the case was argued on this assumption, though Uthwatt, J., pointed out that Lord St. Leonards was able to give effect to the meaning of " Christian " in 1710 in *Att.-Gen.* v. *Drummond,* 1 Dr. & War. 353.

Uthwatt, J., held that the gift was not for post-graduate education generally but was limited to post-graduate education for students possessing prescribed qualifications and consequently was for a class not exactly defined by the will. The learned Judge seems also impliedly to have accepted the view that there was no general charitable intention expressed in the will.

The learned Judge, after a review of the authorities, then held that the trust was a valid and enforceable trust. The following statement of the principle (at p. 294) is a valuable guide: " No doubt, when a charitable purpose is stated, no charitable trust is created unless the purpose is certainly charitable, but given that certain, uncertainty as to the particular charitable purpose intended is, in my opinion, immaterial. No authority was cited to me which supports the proposition that certainty in the definition of an intended specific charitable purpose is necessary and the proposition appears to be wrong in principle and never to have been accepted in practice. If a gift to charity generally does not fail for uncertainty—and that is a proposition which is not open to dispute—it appears to me to be a natural

consequence, though it may not be a necessary consequence, that a specific charitable purpose may be vaguely set out. There is no practical reason why certainty of the exact ambit of a particular charitable purpose should be required, for the Court has as regards all charitable trusts jurisdiction to settle a scheme for their administration—I am not referring to *cy-près* schemes—and it is settled practice that these schemes may not only deal with methods of administration but also with the substance of the trust and define it ".

Although the learned Judge decided this case on this broad ground he also expressed the opinion (at p. 296) that the same result could be reached on a narrow ground. This narrow ground lay in the capacity of the council of the University to draw up a scheme, since the will expressly provided that the scholarship should be held under a scheme or schemes to be formulated by the council. As the learned Judge said: " Put generally, the bequest itself contains practical machinery for getting rid of the vice of uncertainty ". Such a scheme could provide such tests as was thought desirable and need not embrace all students possessing the prescribed qualifications.

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2. *WILL CASES.*

Will—revocation by erasure.—In the goods of Hamer, 113 L. J. P. 31, is a useful reminder of the exception to the Wills Act, 1837, s. 21, which provides erasure will not revoke a will unless executed as a will. In this case the legacies appeared in the will as " —— fifty pounds ". It was conceded in argument that the legacies had been originally for two hundred and fifty pounds. The Judge held as a fact that it was not possible on an inspection of the will as it then stood to discover what was the original amount, and consequently the erasure operated as a revocation to that amount. The exception in the section reads: " except so far as the words or the effect of the will before such alterations shall not be apparent ". Henn Collins, J., said (at p. 32): " The question, therefore, comes down to the same point: whether the striking out of the words which follow ' the sum of ' and are followed by ' fifty pounds ' constitutes a substitution for what was originally there, or whether it is simply and solely not an addition but an obliteration. I think it is simply an obliteration, made after the execution of the will, and of no effect in enabling me to know what was there before ". It will be observed that an obliteration that might constitute a substitution would not be effective to revoke.

Gift of shares to A for life—" the shares to remain the property of J. D., Ltd."—Re Buckingham, 113 L. J. Ch. 23, raised but did not settle the interesting point whether a testatrix can make a valid gift of its own shares to a company. Simonds, J., expressed the opinion that this was still an open question notwithstanding the *dicta* in *Cree* v. *Somervail,* 4 App. Cas. 648; *Kirby* v. *Wilkins,* [1929] 2 Ch. 444. In the particular case, however, the learned Judge held that he could not construe the words: " the shares to remain the property of J. D., Ltd." as constituting a gift to the company. In point of fact he was not prepared to give any explanation of the intentions of the testatrix in these words, but held that in the absence of a residuary gift they passed on intestacy.

Falsa demonstratio—my War Bonds—no bonds at date of will.—In *Re Gifford,* 113 L. J. Ch. 94, a testatrix directed her trustees to pay the income of " my War Bonds " to her granddaughter. At the date of her will she held £740 Consolidated Inscribed Stock which represented a Treasury conversion of £600 5 per cent. National War Bonds. At her death the testatrix held also 500 National Savings Certificates and £200 3 per cent. Defence Bonds which she had purchased since her will.

Simonds, J., held that the £740 Inscribed Stock were included in the direction to the trustees under the principle *falsa demonstratio non nocet,* but that, as the National Savings Certificates and Defence Bonds were not the property of the testatrix at the date of her will, this principle could not apply. Furthermore, they were neither of them property described as War Bonds and so did not fall within the direction.

In deciding as he did the learned Judge followed Eve, J., in *Re Price,* [1932] 2 Ch. 54, where " War Loan " was held to pass some War Bonds purchased before the date of the will which had been converted into Treasury Bonds and Conversion Stock. Simonds, J., said (at p. 96): " I feel some little doubt whether I am not carrying the rule even a little further than Eve, J., did, but, if I do, it is so little further that I think I should be justified in doing it ".

In order to assist the learned Judge in this construction he pointed out that errors of description were not confined to this one case. So the testatrix had described some stock as shares and had wrongly given the number of a house owned by her.

Of course, the distinction between *Re Price* (*supra*) and the present case is that " War Loan " could not describe anything the testatrix had ever had. " War Bonds " did describe what the testatrix had once had but which had been converted by the Treasury before the date of the will. On the other hand, in *Re Gifford* the substance was the same though the name was changed and hence the importance attached to other errors of description.

Gift to " nephews and nieces "—whether includes persons related by affinity.—Re Daoust, [1944] 1 A. E. R. 443, is also a useful case on construction. The testatrix directed her residuary estate to be divided between her nephews and nieces. At the date of the will and death she had only one surviving niece by blood and no nephews. Vaisey, J., held that *prima facie* nephews and nieces excluded all but blood relatives: *Re Greene,* [1914] 1 Ch. 134; *Re Winn,* 86 L. J. Ch. 127. This construction could give way to context and circumstances.

In this case the context referred to nephews and nieces and there was one niece only. Legacies were given to persons who were described as nephew or niece who were (a) the husband of a deceased niece, and (b) the daughter of a brother-in-law. Hence the learned Judge was able to include both these classes but declined to add the husbands of the daughters of the brother-in-law.

The importance of the case lies in the analysis of the reasons for extending the class from blood relatives to relatives by affinity.

Part of a particular fund—gift for life with remainder to surviving children—gift of remainder of trust fund to a third party.—Hawkins on Wills, at p. 53, says: " If a part of a particular fund be given to one person and the residue to another, it is a question of intention, not subject to any particular rule, whether the gift of the residue is to be read as a gift of the

mere balance of the fund after deducting the amount of the sum previously given out of it . . . or a gift of the entire fund subject to the gift previously made out of it. . . . In the latter case, if gift of part fails the gift of the residue may carry the whole fund: in the former case not so". In *Re Parnell's Trusts,* 113 L. J. Ch. 92, this problem was raised by a will in which a testatrix directed the residuary fund to be held on trust as to specific sums (£2,000) for certain named persons including Claude (a bachelor) for life and after his death to divide among his children, and finally "as to all the remainder of the residuary trust fund . . . in trust for H. D. N." Claude died a bachelor. Uthwatt, J., held that the £2,000 after Claude's death fell into residue and passed to H. D. N. and not on intestacy. Obviously this depends upon the construction of the individual will, but is a useful reminder of the principle.

Gift to grandchild "on attaining twenty-one"—gift of intervening income to parent of grandchild for maintenance—contingent gift.—"A gift to a person on attaining a particular age is *prima facie* a contingent gift with the consequence that, if this person does not attain that age, the gift fails. But there are certain well-recognised indications that a gift which is *prima facie* contingent will be construed as being vested. The most familiar of these indications is an express direction to pay the whole of the income arising from the gift for the benefit of the legatee until the attainment of the specified age": *Re Rogers,* [1944] 1 A. E. R., at p. 409. In *Re Rogers* (*supra,* p. 408) the proviso that was sought to be construed as turning a legacy given "on attaining twenty-one" into a vested legacy provided that if the life tenant should die the income of the fund was to be paid to the legatee's mother "for the advancement and education" of the legatee. Vaisey, J., held that there was nothing to displace the *prima facie* construction that the gift was contingent. The reasoning upon which this construction was based appears to be that a gift to a parent for the maintenance of the legatee could not be construed as a gift of the whole income to the legatee. A parent is not bound to account when he or she receives it for maintenance: *Jarman on Wills,* 7th ed., at p. 902. In the learned Judge's opinion, therefore, the proviso was not sufficient to displace *prima facie* construction. This case is useful upon the importance that may be attached to a direction to pay to the parent of the legatee rather than a direction to apply the income for the benefit of it: see *Re Yates,* [1901] 2 Ch. 438, distinguished in the instant case, where in fact the annuity was receivable by the mother of the legatee during her lifetime.

(2 K. & E. 851, n. (*f*).)

Bequest of "stocks and shares"—only stocks and shares in limited companies passing.—*Re Everett,* 113 L. J. Ch. 81, adds another warning to draftsmen of specific legacies. The testatrix bequeathed a number of pecuniary legacies and then directed the executors to sell freehold property and "all my stocks and shares" and divide the proceeds between named legatees. After which there was a residuary gift. The testatrix had comparatively few stocks and shares in limited companies because the bulk of her investments consisted of stocks of public utility companies and Government and local authority stock and loans. If these stocks were included there would have been insufficient to pay the debts and pecuniary legacies.

Cohen, J., held that apart from authority the combination of the words "stocks and shares" had the limited meaning of stocks and shares in limited companies and it was upon this that he held that the specific gift did not

include the other investments. The learned Judge held that there was sufficient ambiguity to enable him to look at the surrounding circumstances, but that these circumstances only enabled him to say that they contained nothing which would extend the natural meaning of the specific gift.

It was argued on behalf of the specific legatees that *Morrice* v. *Aylmer*, L. R. 7 H. L. 717, where it was held that shares could include stock, was authority to enable the Court to include stock other than stock in a limited company. This contention was rejected on the ground that in this case the word "stocks" had been subjoined to "shares". Indeed, the case cited was concerned with capital stock, and it has since been held does not apply where the stock is "debenture stock": *Re Bodman*, [1891] 3 Ch. 135, unless the testator had only debenture stock: *Re Welding*, [1896] 2 Ch. 364.

(2 K. & E. 818, n. (*l*).)

Gift to "such persons [after death of life tenant] as would be my next-of-kin had I died unmarried and intestate".—In *Re Jackson*, 113 L. J. Ch. 78, the testatrix, after a life interest, directed her residuary fund to be held on trust for the persons named above in the event of the life tenant dying without issue. The testatrix died in 1910 and the life tenant died without children. Uthwatt, J., held that such a description implied that some statute or statutes of distribution were in contemplation, and consequently section 50 (2) of the Administration of Estates Act, 1925, applied. By this sub-section, where the will came into operation prior to 1926 a reference to the Statutes of Distribution (22 & 23 Car. 2, c. 10) should apply to the construction of the gift. Under section 50 (2) the Intestates Estates Act, 1890, is not included in the statutes which are temporarily preserved.

In this particular case the problem was whether any Statutes of Distribution could be regarded as having been referred to by the will. The answer was that intestacy can only be so regarded since succession to personalty on intestacy presumes statutory provision. The other aspect of the matter is where the persons are to be entitled to take under the Statutes of Distribution on the death of the life tenant. So far it has been held in these cases, notwithstanding the death of the life tenant after 1925, that section 50 (2) of the Administration of Estates Act, 1925, applies: see *Re Sutcliffe*, [1929] 1 Ch. 123; *Re Sutton*, [1934] 1 Ch. 209.

(2 K. & E. 593, n. (*n*).)

Gift of "jewellery"—unmounted cut diamonds in a bank—exclusion of articles "now" deposited—Wills Act, s. 24.—In *Re Whitby*, [1944] 1 A. E. R. 299, the question arose whether some unmounted cut diamonds kept at the bank passed under a specific gift of "personal chattels" under the Administration of Estates Act, 1925. "Personal chattels" include jewellery, and the Court of Appeal held that unmounted diamonds were gems "made or sold by jewellers" (*Oxford English Dictionary*), and that therefore they were included in the term "jewellery". No distinction was to be made between mounted gems in the form of jewellery and unmounted gems.

By a codicil the testator had excluded jewellery "now deposited" at a specified place. The Court of Appeal held that notwithstanding that a will speaks from death, subject to contrary intention, under section 24 of the Wills Act, "now deposited" must mean deposited at the date of the codicil. If the word "now" were treated as having relation to the date of the death

then it would be redundant having regard to section 24, so that in order to give it some meaning it must be treated as the date of the codicil.

In the course of his judgment the Master of the Rolls expressed the opinion that the authorities cited to the Court had not assisted the Court but that he had found them calculated to confuse. He then went on to say: "Why these other decisions on other wills are supposed to help me I do not know. I am not saying that in any sense of criticism of counsel for the defendants, the residuary legatees, for referring us to them, because he was bound to do so and he was quite right in doing so. I merely say that I find no assistance from them". It is respectfully submitted that it is an unfortunate position that counsel and Court should have to occupy their time with decisions that are of no assistance. The problem of the use of authorities on the construction of wills where the issue turns on "intention" as expressed by the words of the will is a matter which urgently calls for some more specific guidance.

(2 K. & E. 838, n. (*r*).)

Administration—hotchpot clause—date for valuation of the property postponed to life interest.—In *Re Hillas-Drake,* [1944] 1 A. E. R. 375, Simonds, J., has refused to follow the decision of Farwell, J., in *Re Gunther's Will Trusts,* [1939] Ch. 985 (noted *ante,* vol. 4, p. 101) followed by Bennett, J., in *Re Oram,* [1940] Ch. 1001 (noted *ante,* vol. 5, p. 149). The latter case distinguished *Re Wills,* [1939] Ch. 705 (noted *ante,* vol. 3, p. 440) also decided by Simonds, J. Reduced to simple terms the question is whether the date of death or the date of distribution is the correct date for the valuation of the assets which are to be affected by the hotchpot clause. Farwell, J., had held that it was the date of death, but Simonds, J., basing himself upon the long practice of the Court, held that the correct and equitable date was the date of distribution, since that date operates to give equality in the actual beneficial interest received in possession.

Obviously the divergence that now appears in the authorities can only be inconvenient until it is resolved by higher authority, and no doubt this may be done before long. In the meantime the decision is of even more general interest because of the emphasis put upon the practice of the Court as shown by inquiries of the learned Judge and by the orders contained in *Seton's Judgments and Orders.* We should also point out that the present difficulty of conflict can be avoided by express provision in the will.

(2 K. & E., p. cxliv, p. 886.)

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3. *LANDLORD AND TENANT CASES.*

By Lionel A. Blundell, LL.M., Barrister-at-Law.

Option to determine exercised by lessee—construction of covenant to paint "in the last quarter of the said term".—The decision in *Dickinson* v. *St. Aubyn* (1943), 60 T. L. R. 59, noted in *The Conveyancer,* at p. 179 above, has now been reversed by the Court of Appeal: (1944), 60 T. L. R. 269.

In this case there was a lease for seven years with an option for the lessee to determine the tenancy at the end of five years. The lessee exercised this option. He had covenanted to carry out certain painting "in the last quarter of the said term". It was held by Hilbery, J., that by virtue of the exercise of the option the lease became one for five years instead of seven, that the last quarter of the said term therefore meant the last quarter of the five

years' tenancy, and that the lessee was accordingly liable to carry out the painting.

The Court of Appeal, in reversing this decision, drew a distinction between the expression "the last quarter of the said term" in this covenant and the expression "at the determination of the tenancy" in another of the covenants of the lease. "The said term" refers to a period of time; the period of time which had been referred to in the lease was seven years, and therefore "the last quarter of the said term" meant the last quarter of the seven years. The unanimous view of the Court of Appeal was therefore that by determining the lease at the end of five years the lessee escaped the obligation to paint.

(Woodfall, 24th ed., p. 985; 1 K. & E., p. 957.)

Rent Restrictions Acts—first letting a furnished letting—does not determine the standard rent.—The decision of the Court of Appeal in *Signy* v. *Abbey National Building Society* (1944), 60 T. L. R. 272, decides an important point of rent restrictions law upon which an authoritative decision has long been desired.

The standard rent of a dwelling-house subject to 1939 Act control is the rent at which the dwelling-house was let on September 1, 1939, or where the dwelling-house was not let at that date, the rent at which it was last let before that date, or in the case of a dwelling-house which was first let after that date, the rent at which it was first let. Standard rent in the case of a dwelling-house subject to 1920 Act control is similarly defined with respect to the date August 3, 1914. Uncertainty has always attached to the position where the letting at the operative date was a furnished letting, so that some part of the rent charged was in respect of the furniture let with the house. The decision of the Court of Appeal is now that such a letting is to be ignored altogether for the purpose of determining the standard rent. Luxmoore, L.J., in reading the judgment of the Court, said: "A careful consideration of the Acts, including especially the provisions of sections 9, 10 and 12 (2) (i) of the Act of 1920, seems to us to impose a restricted meaning on the word 'rent', for otherwise the standard rent of an unfurnished house, to which the Acts apply, would be fixed, if the first letting at the material date should happen to be of that house unfurnished, with reference to the rent of a furnished house, to which the Acts have no application".

It is thought that this decision is in keeping with the probable intention of the framers of the Acts, though the language of the relevant sections seems to have been strained somewhat in order to achieve it. A parallel question which occurs to mind is whether a letting of the house at the operative date for some purpose other than a dwelling-house (for example, for the purpose of an evacuated business) would be effective to establish a standard rent, or whether the Acts call for a letting as a dwelling-house. It would rather seem that the Court of Appeal, reasoning along the lines of *Signy's Case*, would probably hold that only a letting unfurnished *as a dwelling-house* is effective to determine the standard rent of the house for the purposes of the Acts.

(Woodfall, 24th ed., p. 358; Rent Restrictions Guide, pp. 30, 42.)

Rent Restrictions Acts—landlord's duty to state the standard rent in the rent-book.—The landlord of a house controlled under the Rent Restrictions Acts commits an offence if he uses a rent-book which does not contain the prescribed form of notice setting out, *inter alia*, a statement of the

standard rent (Act of 1933, s. 14; Rent Restrictions Regulations, 1940, Second Schedule). It has been held by the Divisional Court (Viscount Caldecote, L.C.J., Macnaghten and Cassels, JJ.) that if the landlord does not know the standard rent it is his duty to apply to the county court to have it determined: *Austin* v. *Greengrass* (1944), 60 T. L. R. 273.

In that case the landlord did not know the standard rent of the demised dwelling-house because it was part of a larger dwelling-house, and neither the landlord nor the tenant had ever applied to the county court to have the standard rent of the part determined by apportionment. The rent-book in use contained a statement, " The standard rent of the whole house, £78 per annum the tenant paying rates ".

The Divisional Court held that the landlord had committed an offence, inasmuch as the smaller dwelling-house did have a standard rent all the time, even though it remained to be determined by apportionment, and it was the landlord's duty to find out what that standard rent was and state it in the rent-book.

(Woodfall, 24th ed., p. 359; Rent Restrictions Guide, pp. 41, 45.)

Courts (Emergency Powers) Acts, 1939 *to* 1943—*Liabilities (War-Time Adjustment) Act,* 1941—*no jurisdiction to extend a lease beyond the term for which it is granted.*—By section 8 (1) of the Liabilities (War-Time Adjustment) Act, 1941, it is provided that where the Court exercises its powers so as to allow the debtor to remain in possession of any property, it shall make provision in the liabilities adjustment order for securing the payment of any sums payable by the debtor in respect of the property after the date of the protection order, subject to any variation of any lease affecting the property made by or under the Act, and in particular for securing the payment of rent, rates and taxes. By section 1 (3) of the Courts (Emergency Powers) Act, 1943 (replacing a corresponding provision in the Act of 1939), it is provided that subject to the provisions of that Act, a person shall not be entitled, except with the leave of the appropriate Court, to proceed to execution on, or otherwise to the enforcement of, any judgment or order of any Court (whether given or made before or after the commencement of that Act) for the recovery of possession of land in default of payment of rent.

It has sometimes been suggested that the above provisions may have the effect of permitting a tenant to remain in possession after his lease has expired, and this was contended in *In the affairs of Kirby* (1943), 60 T. L. R. 158. In that case a liabilities adjustment order was made two days before the lease expired, and amongst its terms this order provided that the lessor should be at liberty to enforce his order for possession (which he had obtained a long time previously but never enforced) after a certain date some time after the expiry of the lease. This provision was intended to operate as an extension of the lease. The lessee did not in fact vacate the premises until some months later, and the question then came before the Court on the lessor's application for rent or mesne profits up to the date when possession was given to be secured by a provision in the liabilities adjustment order. It was argued that the Court had, within the terms of section 8 (1) of the Liabilities (War-Time Adjustment) Act, 1941, above, so " exercised its powers " as to allow the debtor to remain in possession of the property from the date of the protection order until the date when she actually went out, and that therefore rent or mesne profits for the whole of this period should be secured.

It was held by the Court of Appeal that the Court had no powers, either under the Courts (Emergency Powers) Act or under the Liabilities (War-

Time Adjustment) Act, which it could have exercised so as to entitle the debtor to remain in possession after her lease had expired. The only powers of this kind which the Court had exercised, or indeed could exercise, were powers to allow the debtor to remain in possession of the property for the residue of her term. Accordingly the only rent which had to be secured by the terms of the Court order was that accruing from the date of the protection order until the date of expiration of the lease.

(Woodfall Supplement No. 3, p. 74.)

Landlord and Tenant (War Damage) Acts—multiple lease—power of Court under section 15 (5) *of the* 1939 *Act to reduce the rent.*—Where the tenant serves either a notice of disclaimer or notice of retention in respect of a multiple lease, then on application made within one month the Court has power to determine whether it is equitable to allow the tenant to exercise the right of disclaimer or retention as regards the lease as a whole, or as regards one or more only of the tenements comprised therein, or whether it is not equitable to allow him to exercise the right at all. In the latter case it will direct that the notice of disclaimer or retention shall cease to have effect, but there is a proviso that the Court may, if having regard to the extent of the war damage it considers it equitable to do so, order that the rent reserved by the lease shall, until the war damage is made good, be reduced to such extent as may be specified (section 15 (5)).

The House of Lords has now affirmed the decision of the Court of Appeal that the Court has no power under this proviso to reduce the rent reserved by the lease as from any date earlier than the service of the notice of retention or disclaimer: *Reville* v. *Prudential Assurance Co.* (1944), 60 T. L. R. 321, affirming [1943] K. B. 448 (*a*). Until the tenant serves a notice his liability under the lease for the full rent remains in force. If, then, he serves a notice of retention the lease has effect subject to the modifications expressed in section 10 of the Landlord and Tenant (War Damage) Act, 1939. One of those modifications is that, for the time being at any rate, no rent is payable under the lease by the tenant in respect of the period beginning with the date of service of the notice.

It is important to observe that the carefully expressed limit of the decision in the *Reville Case* (sufficient for the purposes of that case) is that the Court has no power to reduce the rent from a date *earlier* than the date of service of the notice. The House of Lords was careful to reserve the question whether an order can be made reducing the rent even from that date. Lord Russell of Killowen tentatively expressed the opinion that, " On the true construction of the proviso, the reduced rent can only run from the date of the order made, or it might be from the date of the application ", but he was careful to express this as an opinion " as at present advised ", keeping the matter open should it ever arise. Lord Thankerton concurred in this opinion, and the Lord Chancellor also saw the possibility that the order for reduced rent might have as its starting point the date of the Court's decision and not even the date of service of the notice. Lord Porter expressed his view in the words, " Some date which . . . cannot be earlier than the date of the notice of retention, and may well be later ".

It may further be noted that the House of Lords approved also the view of the Court of Appeal that once an application is brought before the County Court Judge under section 15 of the Act, it cannot be withdrawn by the landlord so as to prevent the Court exercising any discretion which it may have under the proviso to that section in favour of the tenant.

(Woodfall Supplement No. 3, p. 41.)

(*a*) Noted at p. 49, *supra*.

4.—*INCOME TAX CASES.*

By Leonard Stein, Barrister-at-Law.

[The cases selected for notice are not necessarily the most important from the standpoint of the income tax practitioner, but those most germane to the matters with which *The Conveyancer* is primarily concerned.]

Tax free annuity—payment to make up net income of a fund to a stated amount—Finance Act, 1941, *ss.* 25, 27 (1) (b).—In *Re Bird,* [1944] 1 Ch. 111, a testator who died in 1932 directed the trustees of his will to pay the income of a certain trust fund to his wife during her widowhood and further directed that "if in any year the income received by my said wife from the trust fund . . . shall amount, after deduction at the source of income tax at the current rate for the time being therefrom, to less than £500, then my trustees shall resort to the capital of the trust fund and shall thereout make good to my said wife the amount of the deficiency". Two questions arose on these provisions of the will. First, were the deficiency payments (*i.e.*, the payments representing the difference between the net income of the trust fund and £500) to be made free of tax? Uthwatt, J., held, as a matter of construction, that they were. But, secondly, if they were tax free payments, were they within section 25 of the Finance Act, 1941, so as to be reducible as therein provided? In other words, was the amount (if any) by which the net income of the trust fund fell short of £500 a "stated amount" within the meaning of section 25, above? The learned Judge answered this question also in the affirmative. The actual amount payable from time to time was unpredictable, but an amount to be ascertained by carrying out an arithmetical operation may (it was held) be a "stated amount" in the relevant sense, notwithstanding that no amount is stated in terms of currency—a proposition in line with the decision in *Re Hawkins,* [1943] Ch. 67. It will be remembered that by section 27 (1) (b) of the Finance Act, 1941, the expression "a stated amount", though it includes a stated fraction of the gross amount of any specified income, does not include a stated fraction of the *net* amount of any specified income, *i.e.*, of that amount after it has been charged to income tax. In *Bird's Case,* above, the net amount of a specified income, *viz.*, the net income of a certain trust fund, was a factor in the ascertainment of the amount payable by the trustee. But it was not a question of seeking to apply section 25 to the net income of the trust fund. The "stated amount" was the amount by which the net income of the trust fund fell short of £500, and section 27 (1) (b) had no application.

Income tax—mortgage interest—capitalisation of unpaid interest—Income Tax Act, 1918, *All Schedules Rules, rule* 21.—The decision of the High Court in *C. I. R.* v. *Oswald* (*Cosier's Settlement Trustee*), [1943] 2 A. E. R. 754, has been affirmed by the Court of Appeal, [1944] 1 A. E. R. 426.

Tax free annual payment—variation on or after September 3, 1939—*Finance Act,* 1941, *s.* 25.—Section 25 of the Finance Act, 1941, does not apply to a provision for the payment of a stated amount free of income tax where the provision, though made before September 3, 1939, was "varied" after that date. The decision of the Court of Appeal in *Dudley* v. *Dudley,* [1944] 1 A. E. R. 29, makes it clear that the word "varied" is to be strictly construed and that what must be shown to

have been "varied" is the provision for the payment of the stated amount. In *Dudley's Case,* above, the facts, briefly stated, were these: By a separation deed executed in 1932 the husband had covenanted to pay to the wife "such a sum as, after the deduction of income tax for the time being payable in respect thereof, will leave a clear sum of £1 15s. per week". By section 27 (1) (a) of the 1941 Act this was equivalent to a provision for the payment of a stated amount, *viz.,* £1 15s. a week, free of tax, and if nothing more had happened, the provision, having been made in 1932, would clearly have been within the scope of section 25 of the Act. But for reasons which need not here be considered, a Supplemental Deed was executed by the parties on September 20, 1939. By this Supplemental Deed (which was based on certain misapprehensions as to income tax law) the wife covenanted not to make any repayment claim in respect of the tax deducted from the weekly sums payable under the deed of 1932. This was made subject to a proviso to the effect that the wife's undertaking was not to apply in the event of her being taxed (meaning directly assessed) on the £1 15s., and it was declared to be the intention of the parties that the wife should in no circumstances receive less than £1 15s. net per week. It was contended on behalf of the wife that by reason of the Supplemental Deed there had been a variation since September 3, 1939, and that consequently section 25 was inapplicable. This contention was rejected by the Court of Appeal, it being pointed out by Lord Greene, M.R., who delivered the leading judgment, that the variation mentioned in paragraph (c) of section 25 (1) is a variation of the provision for payment; that in the case under notice the provision for payment had not been varied but merely re-affirmed; and that confirmation after September 3, 1939, as distinct from variation, is not sufficient to exclude the application of the section.

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5. *DEATH DUTIES CASES.*

By LEONARD STEIN, Barrister-at-law.

Estate duty—inalienable statutory annuity—investment of redemption money in land—Finance Act, 1894, *s.* 5 (5).—Section 5 (5) of the Finance Act, 1894, provides that where, by Act of Parliament or Royal Charter, any lands or chattels are so settled that no one of the persons successively in possession thereof is capable of alienating the same, "the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels". Property to which the benefit of these provisions extends is exempt from aggregation —*Nevill* v. *C. I. R.,* [1924] A. C. 385. In the nature of the case, claims under section 5 (5) are a rarity. A recent illustration is provided by *Duke* of *Marlborough* v. *Att.-Gen.,* [1944] Taxation Reports 63, where the salient facts were as follows: In the reign of Queen Anne Parliament passed an Act by which certain estates were annexed to the dukedom of Marlborough under conditions which made then inalienable. By a later Act there was further annexed to the dukedom an annuity, which was likewise made inalienable. Under an Act of 1873 the annuity was redeemed and the redemption money paid into Court, to be applied, under the direction of the Court, for the benefit of the person entitled thereto. The Court sanctioned its investment in the purchase of freehold property. The whole position was reviewed in 1905, when the then Duke, with the sanction of the Court, executed indentures of disentail and settlement. The settlement provided that the trustees for the time being of the settlement should stand possessed of the properties representing the redemption moneys upon trust for sale and to hold any proceeds of sale upon trust for investment, the

income of the trust fund (after the discharge of outgoings properly payable out of income) to be paid to the person to whom the statutory annuity would for the time being have been payable, if it had not been redeemed. The trustees were empowered, subject to any contrary direction by the Court, to retain unsold any of the trust properties as long as they might think fit. It was further provided that, save in pursuance of an order of the Court, no sale of any of the trust properties and no investment of capital money should be made by the trustees without the consent of the person in whom the dukedom of Marlborough was for the time being vested.

On these facts the question arose whether, on the death of the late Duke of Marlborough, section 5 (5), above, could be invoked in respect of the properties subject to the settlement of 1905. Vaisey, J., held that it could not. It was decided in *Re Viscount Exmouth's Annuity,* [1925] Ch. 280, that in section 5 (5) the word " chattels " does not mean personal property generally but refers to what are commonly known as heirlooms. Hence, in the case before the Court section 5 (5) could be applicable only if the property comprised in the settlement of 1905 could be shown to be " land " within the meaning of the sub-section. The learned Judge held that, since the freeholds were subject to a trust for sale, they must, in accordance with the ordinary rule, be considered to be personal estate, and that the peculiar conditions to which the power of sale was in this case made subject did not cause the properties to lose their quality of personal estate, it being clear from the orders of the Court, which sanctioned the settlement, that the freeholds must be treated as representing merely a temporary investment of funds which were essentially of the nature of personalty. Further, it was held that in any case the words " settled . . . by Act of Parliament or royal grant " in section 5 (5) were not satisfied. There was no question of a royal grant and, as to the words " by Act of Parliament ", the settlement of 1905, though made under or pursuant to an Act or Acts of Parliament, was not a settlement made by Act of Parliament in the strict sense in which the language of the sub-section must be construed.

CORRESPONDENCE.

THE EDITOR.

DEAR SIR,

I have recently had occasion to refer to Precedent 14 in Volume 5, No. 3 (March, 1941) and have found it very useful. I would offer two criticisms. First, as to the gift to the wife subject to her surviving the testator for a period of two months. I have usually found that a testator is anxious that his wife should have the opportunity of making or of revising her testamentary dispositions after his death, and that this is one of the reasons for postponing the vesting for say two months. Suppose, however (as is not impossible in these horrible times) that the testator was killed and the wife became mentally unsound through shock, she might then very easily outlive the two months period but without recovering testamentary capacity, with the result mentioned in your footnote to page 382. Would not some clause such as " Subject to her surviving me for a period of three months from my death and to her being of testamentary capacity for substantially at least in the aggregate third of such period I give devise and bequeath all my real and personal estate whatsoever and wheresoever to my wife absolutely ". I appreciate that this is not a very neat turn of phrase and might itself be fraught with difficulties, but if it conveys to you the thoughts I am trying to put forward and evokes some solution it will have served a purpose. I do not suggest making the executorship subject to such testamentary capacity as this might involve difficulties in obtaining the Grant of Probate in *every* case, whereas in nine cases out of ten as to the gift to the wife no question will arise.

The other objection which struck me was the words " and if it be then uncertain

whether such legatee was living at the expiration of the said period" in connection with the gifts to legatees who might be missing. I appreciate that the point does not arise in connection with the precedent will of which the clause forms part, but in many cases a legacy or share of residue is left to a person subject to him attaining twenty-one. In this war, a young man of nineteen may be serving and the trustees may be well aware that he *is* alive at the expiration of the said period but he may "vanish" or be "missing" before he attains twenty-one. In that event, the directions to the trustees would not apply. I suggest that the clause would be of more universal application if the words in question were omitted entirely and read: "If my trustees are unable to trace any legatees hereunder within one year of the date on which such legatee if living would have attained a vested interest, etc., etc."

Yours faithfully,
J. IRVINE CAULFIELD.

We must thank our reader for his interesting suggestions. The difficulty in settling wills of this character is to succeed in providing for the more probable contingencies while not incumbering the will with provisions for remote possibilities. The proposed limitations of the wife's interest falls on the borderline. It is certainly a useful suggestion if there is any mental instability in the family, but ordinarily the contingency for which it provides seems somewhat remote. The second suggestion appears to be a most useful one and might well be incorporated in the form as it gives effect probably more closely to the testator's intention.

THE LIBRARY.

Introduction to Land Law. Second edition. By A. D. HARGREAVES, M.A., LL.B., Solicitor Reader in Law at the University of Birmingham. 1943. London: Sweet & Maxwell, Ltd. pp. 204. (16s. 6d. net.)

Although Mr. Hargreaves has written his book primarily for beginners there is much to be said for regarding it as one having a wider appeal. It is not a flat statement of the land law to be read to grasp the outline. It is a reasoned exposition of how our land law came to be what it is. If we don't altogether like it then we should note that in a different age our land law has served other purposes. We cannot escape the fact that the law was born of tenures and economic and administrative feudalism whose midwife was the mediaeval Common Law. Mediaeval men did not think as we do, so that it is unreasonable to expect that their notions of what the law should be would be the same.

Once the land law was suckled on the milk of mediaeval scholasticism its features had become too well-defined for its more modern teachers, the Judges of the seventeenth, eighteenth and nineteenth centuries, to change them altogether. Besides, the outposts of feudalism were left in the social and economic land system long after the main body had been annihilated. Indeed, notions inherent in the old law linger on in country districts yet—and that is not to say that they are wrong notions.

As practitioners we are concerned primarily with what the law is. It will sound strange that Mr. Hargreaves describes the law relating to estates in expectancy prior to 1926 as "new interests in land", but that shock may be a salutary one. It is well that we should remind ourselves that the law has roots and that it is they which have sprouted, though Parliament may have lopped and fertilized the plant.

But Mr. Hargreaves's book is not just an historical introduction. It does analyse the modern position of the principal rules of the land, and it is a readable analysis too. We congratulate him on a task well done.

PRECEDENTS

Form 1.

Agreement between Two Limited Companies Manufacturing Clothing for the Concentration of Their Businesses Pursuant to the Directions of the Board of Trade, One Company Providing Accommodation and Labour to Continue the Transferred Business. Provisions for the Maintenance of Goodwill and the Payment of Outgoings (*a*).

(*Drafted by George Maddocks, of Lincoln's Inn.*)

THIS AGREEMENT is made the —— day of —— 19— BETWEEN A Ltd. (hereinafter called "the Nucleus Firm") whose registered office is at *etc.* and who carry on the business of manufacturers of —— of the one part and B Ltd. (hereinafter called "the Closed Firm") whose registered office is at *etc.* and who carry on the business of manufacturers of —— at premises at that address (which premises are hereinafter referred to as "the Closed Factory") of the other part Parties.

WHEREAS :—

(1) Pursuant to and in accordance with the provisions in course of application by the Board of Trade for the concentration of the clothing manufacturing industry a scheme has been submitted to and sanctioned by that Board for the concentration of the business so carried on as aforesaid by the Closed Firm at the Closed Factory with that carried on by the Nucleus Firm at its premises situate at [*insert address*] under the terms of which scheme the Nucleus Firm has been given "nucleus status" and the business of the Closed Firm is to be transferred from the Closed Factory to and carried on at the beforementioned premises of the Nucleus Firm Recitals: scheme of concentratio of businesses

(2) The parties have determined to enter into this present agreement for the purpose of giving effect to and defining and regulating their respective rights and liabilities under and during the operation of the said scheme Agreement.

NOW THIS AGREEMENT WITNESSETH as follows :—

1. As from the date upon which the said scheme shall come into operation the business of the Closed Firm (hereinafter referred to as "the Closed Firm's business") shall be transferred from the Closed Factory to and be carried on by and in the name of the Closed Firm at the factory of the Nucleus Firm at [*insert address*]. Transfer of business.

2. All garments (other than such as may be made by outdoor workers employed by the Closed Firm) required by and in the course and for the purpose of the Closed Firm's business shall be "cut made and trimmed" and all garments made by such outdoor workers for Provisions for manufacture.

(*a*) Stamp 10s.

the like purpose shall be "finished" by and at the premises and as part of the business of the Nucleus Firm but subject to and upon the following conditions :—

Conditions of manufacture: transfer of staff;

(1) The Nucleus Firm shall for the purpose aforesaid and so far as may be lawfully practicable take over and retain the services of all such members of the staff (other than outdoor workers) of the Closed Firm as may be willing to enter the service of the Nucleus Firm at salaries and wages and upon terms and conditions of employment not lower or less favourable to them than their present salaries and wages and conditions of employment under the Closed Firm and such staff shall be employed exclusively [primarily] in or in connection with the production or finishing as the case may be of garments to meet the requirements of the Closed Firm's business

supervision by officer of closed firm;

(2) The Closed Firm shall be permitted to have one director or other officer or servant of the Closed Firm at the factory of the Nucleus Firm at all times during normal business hours and the Nucleus Firm shall afford him all necessary and proper office and other accommodation there and facilities for the conduct by him and supervision of the Closed Firm's business (including the production and finishing by the Nucleus Firm of garments on behalf of the Closed Firm) and the execution packing and dispatch of orders of the Closed Firm's business And (save as may at any time hereafter be agreed between the parties) such director officer or servant shall not for any purpose be deemed to be in the employment or service or subject to the orders of the Nucleus Firm

provision of accommodation for packing;

(3) The Nucleus Firm shall also provide adequate accommodation and facilities at its said premises for the storage of stocks and the packing and dispatch of goods by the Closed Firm and for not more than —— servants (additional to the provisions in sub-clause (2) hereof) of the Closed firm to be retained in the employment of the Nucleus for those purposes

provision of accommodation for machinery;

(4) If and so far as the Closed Firm may require the Nucleus Firm shall provide at its said factory [benching and other] accommodation for not less than —— sewing machine heads and —— which shall be transferred thereto from the Closed Factory but save as aforesaid no other plant machinery fixtures fittings furniture or equipment shall be or be required to be so transferred and all further plant machinery and equipment requisite for the carrying on of the Closed Firm's business in accordance with this agreement shall be provided by the Nucleus Firm

provision of labour and materials;

(5) The Nucleus Firm shall to the best of its ability provide and employ all labour power and other facilities requisite for the purpose of manufacturing and shall on behalf of the Closed Firm cut make and trim garments of the type or types hitherto manufactured by the Closed Firm and for the finish of garments of the like type made by outdoor workers employed by them and for that purpose shall provide all necessary [trimmings] [cotton] [buttons] [*here insert particulars of the goods to be provided*] but so nevertheless that the Nucleus Company shall not at any time be liable or required so to manufacture or furnish as the case may be on behalf of the Closed Firm any weekly quantity of garments in excess of 20 per cent. of the quantity which having regard to its available labour (taking into account full-time

workers only) and working conditions the Nucleus Firm has in such week the capacity for manufacturing or finishing as the case may be

(6) The Nucleus Firm shall so far as it lawfully may supply or procure the supply to the Closed Firm at net cost and from such supplies (if practicable) as the Closed Firm may designate of all such supplies of cloth material and sundries (other than as mentioned in sub-clause (3) hereof) as they may from time to time require for the purpose of their business to the extent at least of the quantities necessary in order to maintain the output and production of their business at not less than 20 per cent. of the combined output and production of the Nucleus Firm and the Closed Firm Provided Nevertheless that the Closed Firm shall be at liberty (if and so far as may be legally permissible) to purchase any such cloth material or other sundries otherwise than from or through the medium of the Nucleus Firm but in case and to the extent that it may do so the Nucleus Firm shall be released and exonerated from its obligation under this present clause to supply or procure the supply of such cloth material or other sundries

provision of cloth and material;

(7) The Nucleus Firm shall be responsible for the payment of and shall duly and punctually pay the following items :—

payments to be made by the nucleus firm.

(a) the rent of the Closed Factory

(b) all rates and taxes payable in respect of the Closed Factory

(c) the cost of all necessary maintenance and repair of the Closed Factory for which the Closed Firm may be legally liable

(d) the cost of providing such fire guards at the Closed Factory as may be required by law

(e) all fire or war damage insurance premiums or contributions payable in respect of the contents of the Closed Factory.

3. The Closed Firm shall pay the Nucleus Firm for and in respect of such cutting making and trimming or finishing as aforesaid on the basis and in accordance with the scale set out in the Schedule hereto.

Payments to be made by the closed firm.

4. All sums payable by the Closed Firm to the Nucleus Firm under the provisions of this agreement whether in respect of such cutting making and trimming or finishing charges as aforesaid or for supplies of cloth materials or sundries shall be settled weekly [monthly] on the —— day of the week [month] next succeeding the last day of the week [month] in which such charges shall have been incurred or such goods shall have been supplied.

Settlement of accounts.

5. Each of the parties hereto shall respect the business and goodwill of the business of the other and will not knowingly do or permit or suffer anything to be done in the carrying into effect of the said scheme or of this agreement which might operate to the detriment or prejudice of the business or goodwill of the other and in particular all such information as may come to the knowledge of either party concerning the business of the other shall be deemed to be and be treated as being of a confidential nature.

Provisions safeguarding goodwill.

6. Each of the parties shall from time to time make full disclosure to the other of all such facts figures and information as may be relevant or material to the fixing of prices in connection with the goods of either party under the Prices of Goods Act 1939.

Disclosure of information.

7. This agreement shall continue in force until such time as the arrangements set up as hereinbefore recited by the Board of Trade

Period of agreement.

for the concentration of the clothing manufacturing industry shall have been officially determined or dissolved by competent authority.

IN WITNESS *etc.*

THE SCHEDULE.

[*To contain particulars of the payments to be made by the Closed Firm.*]

Form 2.

Agreement between Two Firms of Clothing Manufacturers for the Concentration of Their Respective Businesses Pursuant to the Directions of the Board of Trade, the Business of the One Firm being Taken Over by the Other, a Fixed Annual Payment being Made. Provisions for Preserving the Separate Goodwill of the Transferred Business (*a*).

(*Drafted by George Maddocks, of Lincoln's Inn.*)

Parties.

THIS AGREEMENT is made the —— day of —— 19— BETWEEN A and B of *etc.* who carry on the business of clothing manufacturers in partnership together at —— under the style of A & B (hereinafter called "the Nucleus Firm") of the one part and C and D of *etc.* who carry on a similar business in partnership together at —— under the style of C & D (hereinafter called "the Closed Firm") of the other part

Recitals: scheme for the concentration of the businesses;

WHEREAS:—

(1) Pursuant to and in accordance with the directions of the Board of Trade a scheme has been submitted to and approved of by the Board of Trade for the concentration of the businesses carried on as aforesaid by the Nucleus Firm and the Closed Firm under the provisions of which scheme the Nucleus Firm has been given "nucleus status" and the business of the Closed Firm is to be transferred to and carried on at the before-mentioned factory premises of the Nucleus Firm

agreement.

(2) The parties have determined to enter into this present agreement for the purpose of giving effect to and defining and regulating their respective rights and liabilities under and during the operation of the said scheme

NOW THIS AGREEMENT WITNESSETH as follows:—

Transfer of closed business.

1. As from the date upon which the said scheme shall come into operation the business of the Closed Firm (hereinafter referred to as "the transferred business") shall be transferred from the premises at —— at which it is at present carried on (which premises are hereinafter referred to as "the closed factory") to and be carried on at the factory of the Nucleus Firm situate at ——.

Retention of stock by closed firm.

2. All the stock-in-trade plant machinery fixtures and fittings furniture and other chattels of the Closed Firm shall be retained in its

(*a*) Stamp 10s.

exclusive possession and control and no part thereof shall be required to be transferred to the factory of the Nucleus Firm.

Control of transferred business.

3. The Nucleus Firm shall manage and control the transferred business and shall so far as may be lawfully practicable take over and retain the services of all such members of the staff of the Closed Firm as shall be willing to enter the service of the Nucleus Firm at salaries or wages and upon terms and conditions of employment not less or less favourable than they respectively enjoyed under the Closed Firm.

Conduct of transferred business.

4. The Nucleus Firm shall conduct the transferred business in such manner so far as may be practicable (but without causing to or imposing upon the Closed Firm any legal liability in respect of the transactions acts or deeds of the Nucleus Firm) as clearly to inform customers and all others dealing with the Nucleus Firm in connection therewith that all orders or other transactions in relation thereto are executed or entered into by the Nucleus Firm as such in respect of the transferred business And generally the Nucleus Firm shall so far as may be reasonably practicable do all such things as may be within its power in order to maintain and preserve the separate goodwill and successfully carry on the transferred business and to represent it to the public as a separate branch or department of its business associated with the name of the Closed Firm.

Right of partner in transferred business to exercise control.

5. The Nucleus Firm shall provide accommodation in its office for the said D who shall be entitled to participate with the principals of the Nucleus Firm in the overhead supervision of the transferred business but so that he shall be under no obligation whatsoever to do so nor shall he be subject to the orders or instructions or be liable to be regarded as a servant of the Nucleus Firm The functions exercisable by the said D shall be limited to the dealing with the customers of the transferred business in connection with the solicitation for or acceptance and due execution of orders but he shall not be entitled to fix or agree prices without the concurrence or approval of the Nucleus Firm.

Payment to closed firm.

6. In consideration of the premises the Nucleus Firm shall during the subsistence of this agreement pay to the Closed Firm the sum of £1000 per annum (subject to apportionment at the expiry of the period for which this agreement shall be in operation) such sum to be payable by equal half-yearly payments in advance the first to become due and payable immediately upon the coming into operation of the said scheme.

Profits of transferred business.

7. Subject as aforesaid the Closed Firm shall not be entitled to participate in or receive any profits of the transferred business and shall out of the payment provided for by clause 6 hereof and any other money defray all rent rates taxes costs of upkeep and maintenance or other outgoings which may from time to time be payable in respect of the closed factory but nothing herein contained shall be deemed to relieve the Nucleus Firm either wholly or partially from any liability which may be imposed upon it by law or not at any time hereafter to contribute as a Nucleus Firm to any compensation scheme or fund established for the benefit of firms closed down under the provisions of the said Order or any like Order.

Duration of agreement.

8. This agreement shall continue in force until such time as the

arrangements set up as hereinbefore recited by the Board of Trade for the concentration of the Clothing Manufacturing Industry have been officially determined or dissolved by competent authority.

IN WITNESS *etc.*

Form 3.

Declaration of Trust by Executors of the Benefit of the Statutory Charge for Death Duties on Specifically Devised House Property which has Suffered War Damage, in Favour of the Residuary Legatees, the Duties having been Paid Out of the Residuary Personalty (*a*).

Parties. THIS DECLARATION OF TRUST is made the —— day of —— 19— BETWEEN A of *etc.* and B of *etc.* (hereinafter called "the Executors") of the first part C of *etc.* and D of *etc.* (hereinafter called "the Devisees") of the second part and E of *etc.* and F of *etc.* (hereinafter called "the Residuary Legatees") of the third part

Recitals: will of testator; WHEREAS :—

(1) X late of *etc.* (hereinafter called "the Testator") by his will dated the —— day of —— after appointing the Executors to be executors and trustees thereof and giving certain pecuniary legacies (some of which were to be paid free of duty) devised his freehold estate known as the Blackacre Estate in the county of —— unto the Devisees in fee simple as tenants in common in equal shares And the Testator thereby devised the residue of his real estate as therein mentioned and bequeathed unto the Residuary Legatees the residue of his personal estate in equal shares

death and probate; (2) The Testator died on the —— day of —— without having revoked or altered his said will which was on the —— day of —— duly proved by the Executors in the —— Probate Registry

seisin of Blackacre; (3) The Testator was at his death seised in fee simple in possession free from incumbrances of the Blackacre Estate but was entitled to no other real estate

war damage to Blackacre; (4) Portions of the Blackacre Estate prior to the death of the Testator suffered war damage in respect of which it is anticipated that certain value payments will be payable under the War Damage

(*a*) The object of the scheme carried out by the above Precedent is to prevent interest running on the duty and to enable the residuary legatees to be paid as much as possible of the residuary estate and the executors to wind up the estate as far as possible. It may often happen under present conditions that it is for all practical purposes impossible to raise death duties by sale or mortgage of land in respect of which they are payable, especially when it has suffered war damage. In such cases the executors are in a somewhat difficult position; they are accountable for the duty up to the whole value of the estate and cannot safely distribute the personalty without paying, or making satisfactory arrangements with the devisees for the payment of, the duty on the realty (see *O'Grady* v. *Wilmot*, [1916] 2 A. C. 231). The devisees are, it is true, under s. 16 (5) of the Law of Property Act, 1925, liable to account for or repay the duty to the executors; but they may well be unable to do so. The executors are entitled to pay the estate duty out of the residuary personalty, and if they do so the realty will be charged in favour of the residuary personalty for the amount paid (see *Re Hole*, [1906] 1 Ch. 673; *Re Wilson*, [1916] 1 Ch. 220). The position in regard to the succession duty is not quite the same, though under s. 18 of the Finance Act, 1894, this duty is also a charge on the land itself as well as on the successor's interest. A certificate of payment of the estate duty under s. 9 (2) of the Finance Act, 1894, should be obtained and a land charge registered.

Act 1943 but the amount of such payments has not been finally determined by the War Damage Commission

(5) The Executors shortly after the Testator's death sold certain of the investments forming part of the residuary personal estate of the Testator and out of the net proceeds of such sale and the Testator's ready money paid the funeral and testamentary expenses and debts of the Testator and the said legacies bequeathed by his said will and the legacy duty on such of the said legacies as were given free of duty

administration of estate;

(6) The estate duty which became payable on the death of the Testator in respect of the Blackacre Estate has been assessed at the sum of £—— (including the sum of £—— provisionally assessed in respect of the said value payments) and the succession duty at the sum of £—— (including the sum of £—— provisionally assessed in respect of such payments)

assessment of death duties;

(7) The Executors have been advised by Messrs. —— that it is impracticable except at a loss to raise the said duties by sale of the Blackacre Estate or any part thereof or to raise such duties by mortgage.

Blackacre unsaleable

(8) The Executors as the personal representatives of the Testator but with the consent of the Residuary Legatees have out of the said proceeds of sale of the said residuary personal estate of the Testator paid the said estate and succession duty payable in respect of the Blackacre Estate (including the said estate and succession duty provisionally assessed in respect of the said value payments)

payment of duties;

(9) By an assent in writing bearing even date with but signed before this deed the Executors assented to the vesting in the Devisees of the Blackacre Estate (other than and except the said value payments) as joint tenants subject to the statutory charge in favour of the Executors arising on such estate under section 9 of the Finance Act 1894 by reason of the payment by them of the said sum of £—— in respect of the estate duty thereon UPON TRUST to sell the same and to hold the net proceeds of sale and the rents and profits until sale upon trust for the Devisees as tenants in common in equal shares AND it was thereby agreed and declared that the Devisees or other the trustees for sale for the time being of such assent should have power as therein mentioned (*inter alia*) to mortgage the Blackacre Estate as if they were the absolute owners thereof

assent to vesting of Blackacre estate;

(10) By a legal charge bearing even date with but executed after the said assent and before this deed and made between the Devisees of the one part and the Executors of the other part the Devisees charged the Blackacre Estate (other than and except the said value payments) by way of legal mortgage with the repayment to the Executors on demand of the said sum of £—— in respect of the succession duty thereon so paid by the Executors as aforesaid and interest thereon as from the death of the Testator

charge by devisees for succession duty

(11) It was the intention that such charge should be in lieu and in satisfaction of any statutory charge in favour of the Executors arising or vested in them by reason of such payment

(12) The Executors have paid and transferred to the Residuary Legatees the balance of the cash and investments representing the said residuary estate of the Testator in manner set out in the schedule hereto.

transfer of residuary personalty

agreement for declaration of trust.

(13) It was agreed by and between the parties hereto that upon such payments and transfers being made and documents executed the Executors should execute such declaration of trust of the benefit of the said statutory charge and of the principal sum and interest secured by the said mortgage in favour of the Residuary Legatees as is hereinafter contained and that the Devisees should join in this deed in manner hereinafter appearing

NOW THIS DEED made in pursuance of the said agreement and in consideration of the premises WITNESSETH and it is hereby agreed and declared as follows :—

Confirmation of statutory charge.

1. The Devisees hereby declare by way of confirmation that the principal sum secured by the said statutory charge shall bear interest at the rate of £3 per cent. per annum as from the death of the Testator.

Executors to have powers of mortgagees by deed.

2. The Executors shall in relation to such statutory charge have all the statutory powers of mortgagees by deed free from the restrictions on the exercise of such powers contained in section 103 of the Law of Property Act 1925.

Declaration of trust of charges.

3. The Executors shall stand possessed of the benefit of the said statutory charge and of the charge created by the said recited mortgage and of their statutory right to recover from the Devisees personally a due proportion of the said sums so paid by the Executors in respect of the said estate and succession duty and any additional duty which may become payable in respect of the said value payments IN TRUST for the Residuary Legatees as tenants in common in equal shares and the Executors shall (subject as hereinafter provided) comply with the requirements of the Residuary Legatees in regard to the exercise of their statutory and other powers in relation thereto.

Executors to concur in sales.

4. The Executors shall have power to concur from time to time in the sale of any part or parts of the Blackacre Estate free from the said charges at a price to be approved by them and subject to the payment to them of the purchase money the balance whereof after deducting the expenses of and incidental to such sale shall go in satisfaction rateably of the principal sums secured by the said charges respectively and the said principal sums shall be considered as belonging to the Executors on a joint account and accordingly the receipt of the Executors shall be an effectual discharge for the same and every part thereof respectively and all powers and remedies available by statute or under this deed for recovering payment of such principal sums and interest shall be exercisable and enforceable by the Executors accordingly without the concurrence of the Residuary Legatees or either of them or other the persons beneficially interested therein.

Charges not to be called in till end of war.

5. The Executors shall not before the end of the War (which expression shall for the purposes hereof mean the date declared by His Majesty by Order in Council to be the date on which the emergency that was the occasion of the passing of the Courts (Emergency Powers) Act 1939 came to an end) call in the principal sums secured by the said charges or either of them or enforce their statutory rights against the Devisees Provided that notwithstanding this present provision and without prejudice thereto the powers of sale applicable to such charges respectively shall be deemed to arise on the date hereof.

Executors t pay addi- tional duty.

6. The Executors shall upon the amount of the said value payments being finally determined render a corrective affidavit (if necessary) for the purpose of the assessment of any additional estate and succession duty thereon and shall upon due provision to their satisfaction being made for their recoupment by the Residuary Legatees under the covenant in that behalf hereinafter contained discharge such duties (if any) and any additional estate and succession duty which may become payable in respect of the said residuary personal estate of the Testator by reason of any increase in the estimated amount of such value payments and the Residuary Legatees hereby jointly and severally covenant with the Executors and their respective executors and administrators that they the said covenanting parties respectively and their respective executors and administrators will forthwith upon such payment being made by the Executors repay to the Executors the amount of any such additional estate and succession duty on the said value payments and the said residuary personal estate of the Testator and interest thereon (if any) and will at all times hereafter keep the Executors and each of them and their and every of their executors and administrators effectually indemnified against all actions proceedings claims and demands costs damages and expenses in respect thereof (*b*).

Executors and residuary legatees to be repaid out of value payments.

7. The Executors shall out of the said value payments if and when received by them repay to the Residuary Legatees in equal shares the said sums of £—— and £—— so paid by the Executors out of the residuary personal estate as aforesaid in respect of the said estate and succession duty thereon with interest thereon as from the date hereof at the rate of £3 per cent. per annum and shall recoup themselves or repay to the Residuary Legatees as the case may be any moneys expended by the Executors in discharging any additional duties which may become payable in respect of the said value payments when the amount thereof is finally determined with interest thereon at the rate aforesaid as from the date on which such moneys shall be so expended.

IN WITNESS *etc.*

THE SCHEDULE ABOVE REFERRED TO.

[*This will contain particulars of the cash and investments paid and transferred to C and D.*]

(*b*) It may be more satisfactory from the executors' point of view to provide that a fund be set aside out of the residuary personalty to answer the additional duties. The value payments should, it seems, be regarded as personal property, and although they will under s. 29 of the War Damage Act, 1943, pass to the devisees, it is understood that they are so regarded by the Estate Duty Office. On this view there would be no specific charge of the estate duty thereon under the Finance Act, 1894. There is nothing in s. 23 of the War Damage Act to prevent the executors agreeing to repay the residuary legatees out of the payments when received, though a charge by way of assignment would be void without the consent of the War Damage Commission. It may be noted that the Estate Duty Office is also prepared to treat the value payments as property of which the executors do not know the amount or value within s. 6 (3) of the Finance Act, 1894, and, subject to their undertaking to bring in an account when the amount is determined and to pay the duty thereon and any additional duty on the rest of the estate, will not require payment of the duty until then.

Form 4.

Deed of Covenant for Payment of a Tax-free Annuity. Express Provision for Repayment of Sum Equal to Proportion of Tax Recovered by Annuitant (*a*).

Parties.

THIS DEED OF COVENANT made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Covenantor") of the one part and B of *etc.* (hereinafter called "the Annuitant") of the other part WITNESSETH as follows:—

Covenant to pay annuity.

1. The Covenantor hereby covenants with the Annuitant that the Covenantor will (subject as hereinafter provided) during the joint lives of himself and the Annuitant pay to the Annuitant such an annual sum as after deducting income tax thereon at the standard rate for the time being in force shall amount to a net sum of £—— per annum such annual sum to accrue from day to day but to be paid by equal quarterly payments on the usual quarter days the first payment (being an apportioned sum) to be paid on the —— day of —— next (*b*).

Covenant to pay sum equal to proportion of reliefs.

2.—(1) The Annuitant hereby covenants with the Covenantor that he the Annuitant will pay to the Covenantor a sum equal to such a portion of any income tax recoverable by the Annuitant in respect of each year in which the annual sum hereby covenanted to be paid is payable (other than and except post-war credits and reliefs by the statutes and rules relating to income tax attributable to particular items of income) as shall bear the same proportion to the entirety of the tax recoverable by the Annuitant as the said annual sum bears to his total taxable income for that year such payment to be made in each financial year so soon as the tax recoverable shall be ascertained and paid or credited to the Annuitant And that the Annuitant will sign all proper forms and documents necessary for ascertaining and obtaining repayment of any income tax recoverable by him

Payment of annuity to be conditional on repayment.

(2) The payment of the annual sum hereby covenanted to be paid by the Covenantor shall be conditional upon the performance of the covenants on the part of the Annuitant hereinbefore contained and in the event of a breach of any of the said covenants the payment of any quarterly instalments of the said annual sum covenanted to be paid by the Covenantor not presently payable at the date of such breach shall be suspended until all such breaches shall have been effectually remedied whereupon the whole of the instalments payment whereof has been suspended shall forthwith become payable

(*a*) In cases where the wording of the covenant falls within the principle of *Re Pettit*, [1922] 2 Ch. 765, the annuitant is liable without any express provision to repay to the covenantor a due proportion of the tax recoverable by him. In 193 L. T. News. 160 an instance is cited where the Revenue in such a case refused payment of the reliefs, but it is submitted that there is no justification for such a course. The full amount of the annuity and the tax thereon is treated for income tax purposes as the income of the annuitant. Even if the reliefs are to be regarded as given for the personal benefit of the annuitant, he has presumably received a corresponding benefit by the increased amount of the annuity based on the right of the covenantor to repayment. Anyhow, the Revenue is not concerned with what the taxpayer does with his reliefs. In view of the doubt, it appears safer, however, to provide for repayment of a sum equal to the proportion of the reliefs.

(*b*) The stamp duty could be reduced by providing for weekly payments.

(3) For the purposes of this clause the tax recoverable by the Annuitant shall be deemed to accrue from day to day during the financial year in respect of which it is recoverable and be apportionable accordingly.

(4) The covenants on the part of the Annuitant hereinbefore contained shall be in substitution for any implied trust of the due proportion of any tax recoverable by the Annuitant and of his statutory rights in relation thereto in favour of the Covenantor (*c*).

IN WITNESS *etc.*

Form 5.

Deed of Covenant to Make Up an Annuity under a Will to a Fixed Annual Sum, the Liability being Limited to the Benefits Received by the Covenantor under the Will.

THIS DEED OF COVENANT made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Covenantor") of the one part and B of *etc.* (hereinafter called "the Annuitant") of the other part Parties.

WHEREAS (1) under and by virtue of the will dated the —— day of —— of X late of *etc.* (hereinafter called "the Testator") which will was on the —— day of —— duly proved in the Principal Probate Registry by the executors therein named the Annuitant is entitled during his life to an annuity of £—— per annum payable by equal quarterly payments the first of such payments to be made three months after the Testator's death and the Covenantor is entitled to (a) a legacy of £—— and (b) a life interest in the residuary personal estate of the Testator Recitals: title to annuity and legacy and life interest of covenantor;

(2) The Covenantor is desirous of making up the said annuity to the gross yearly sum of £—— desire to make up annuity.

NOW THIS DEED WITNESSETH as follows:—

1.—(1) In pursuance of the said desire and in consideration of the premises the Covenantor hereby covenants with the Annuitant that the Covenantor will (subject as hereinafter provided) during the residue of the joint lives of himself and the Annuitant pay to the Annuitant such an annual sum as with the gross amount paid to the Annuitant in respect of the said annuity will make up the gross annual sum of £—— Covenant to pay annual sum.

(2) The sum hereby covenanted to be paid shall be considered as accruing from day to day but shall be payable by quarterly payments on the quarter days on which the said annuity is payable

(3) The Covenantor shall receive no personal benefit from the sum hereby covenanted to be paid.

2. The yearly sum payable hereunder shall not exceed the aggregate of the following amounts, that is to say:— Limitation of covenantor's liability.

(a) £3 per cent. on the amount or (if the estate of the testator shall be insufficient to provide for the payment in full of the said legacy and annuity) the abated amount of the said

(*c*) See the forms of order in *Re Kingcombe*, [1936] Ch. 566, and *Re Eves*, [1939] Ch. 969.

legacy of £—— or if investments shall be appropriated to such legacy the gross income actually received from such investments in the year immediately preceding such appropriation

(b) the gross income actually received from the investments for the time being representing the said residuary personal estate of the Testator in the year immediately preceding the period in respect of which such payment falls to be made.

IN WITNESS *etc.*

Form 6.

Lease of Flat—Moderate Form: Lessee being Responsible for Interior. Readily Adaptable to Case Where the Lessee is Under No Repairing Liability. Additional Rent in Respect of Any Increase in Rates.

THIS LEASE made the —— day of —— 19— BETWEEN —— of *etc.* (hereinafter called "the Landlords") of the one part and —— of *etc.* (hereinafter called "the Lessee") of the other part WITNESSETH that in consideration of the rents hereinafter reserved and of the Lessee's covenants hereinafter contained THE LANDLORDS hereby demise unto the Lessee ALL THOSE dwelling-rooms and premises being on the —— floor and known as Flat No. — at and forming part of the building known as —— in the county of —— TOGETHER with the free right of ingress and egress to and from the said dwelling-rooms and premises by the Lessee —— servants and friends at all times along and through the passages stairs and doors of the building of which the same dwelling-rooms and premises form part (hereinafter referred to as "the said building") AND TOGETHER with all privileges lights rights easements fixtures and appurtenances to the said premises belonging or appertaining thereto or used therewith [including the use of a storeroom (*a*)] EXCEPT AND RESERVING unto the Landlords and the person or persons for the time being occupying any other part or parts of the said building the passage of gas water and other pipes and wires for electricity passing through the said premises and the free running of gas water soil and other matters in and through the pipes connected with or being upon the premises hereby demised and the right to affix therein further pipes and wires as aforesaid for the convenience of other parts of the building EXCEPT AND RESERVING ALSO to the Superior Landlords and any person or persons authorised by them full right at any time or times to erect new buildings rebuild alter and extend any buildings on adjoining or neighbouring land to such height elevation extent or otherwise as the Superior Landlords may think fit AND ALSO SUBJECT to all rights of light and drainage and other easements belonging or appertaining to any adjacent property if any such exist TO HOLD the premises hereby demised (hereinafter referred to as "the demised premises") Unto the Lessee for the term of —— YEARS from the —— day of —— 19— YIELDING AND PAYING during the said term yearly and so in proportion for any fraction of a year the rent of —— [AND ALSO YIELDING AND PAYING (in the event of the rates or water rate

(*a*) Other items such as use of coal storage, access to dustbins or the like, should be added.

payable by or assessed upon the Landlords in respect of the said building or of the demised premises being increased in amount beyond that payable at the commencement of the said term) by way of additional rent such further sum or sums as shall be equal to a fair proportion of such annual increase attributable to or paid in respect of the demised premises] such rent[s] to be paid in advance by equal quarterly payments on the usual quarter days in every year the first payment being in respect of the period from the —— day of —— 19— to the —— day of —— 19— to be made on the —— day of —— 19— PROVIDED NEVERTHELESS that it shall be lawful for the Landlords to collect the said additional rents in respect of increased rates and water rate on the quarter day immediately following the receipt of the demand for such increase PROVIDED ALWAYS that in the event of the rates or water rate aforesaid being in any year of assessment decreased in amount beyond that payable at the commencement of the said term the Landlords will allow a proportionate deduction from the rents otherwise payable hereunder according to the annual decrease of such rates attributable to or paid in respect of the demised premises and any such allowance shall be made at the time at which any increase would be payable as hereinbefore provided.

1. AND the Lessee hereby covenants with the Landlords in manner following:—

(A) To pay the rents hereby reserved on the days and in manner aforesaid clear of all deductions whatsoever

(B) To keep the inside of the demised premises and the Landlords' fixtures and fittings throughout the said term in good tenantable and sanitary preservation and condition except as hereinafter mentioned and at the end or sooner determination of the said term to deliver up the same in such repair and condition [fair wear and tear and damage by fire act of God or inevitable accident excepted] and on demand to make good any damage or want of repair caused by neglect or default by the Lessee in performing his obligations hereunder

(C) Once [in every seventh year of the said term and] in the last year thereof howsoever determined to paint with two coats of good oil paint and two coats of enamel and paper with suitable quality paper varnish whitewash colour and generally decorate in an appropriate style (and in the last year of the said term to the approval of the Landlords) all the inside parts of the demised premises usually painted enamelled papered varnished whitewashed coloured and decorated [PROVIDED NEVERTHELESS that in the year in which the said term shall be determined (whether by effluxion of time notice or otherwise) the Lessee shall have the option of paying to the Landlords a sum equal to the amount of one quarter's rent in lieu of executing the works aforesaid if such payment is made prior to the determination of the term but such payment shall not relieve the Lessee from liability in respect of unreasonable waste or wanton damage occasioned to the demised premises] (*b*)

(D) That the Landlords and their surveyor agents and workmen at reasonable times of the day may enter upon the demised premises or any part thereof for the purpose of repairing or painting any other part of

(*b*) Omit this clause if the lessee is not responsible for repairs or decorations. Note that the wording will require alteration if it is intended to cover the Lessee's obligations under (C).

the said building or making good any defects in the main walls chimney flues or pipes or performing any other work required to be done for which the Landlords may be responsible and further that it shall be lawful for the superior Landlords and their agents with or without workmen and others during the said term to enter into and upon the demised premises or any part thereof to examine the state and condition thereof [and to execute any works for which they are liable]

(E) Not without the written consent of the Landlords to pull down or alter or in any manner interfere with the construction or arrangement of the demised premises or cut alter or injure any of the walls partitions joists or floors thereof or the electric wiring or pipes therein or in any manner deface the walls or ceilings of the demised premises

(F) Once at least in every month of the said term to clean properly all windows of the demised premises and to keep the chimneys and flues belonging thereto swept and in clean condition and not to stop up darken or obstruct any windows or lights

(G) To keep all taps sinks baths lavatories cisterns and waste and soil pipes upon the demised premises clean and open and free from obstruction and to be responsible for all damage occasioned to the demised premises and other flats in the said building through the bursting overflowing or stopping up of such taps sinks baths cisterns and pipes or other acts occasioned by the negligence of the Lessee or any person under the control of the Lessee and not to waste or permit to be wasted any water upon the demised premises

(H) Not at any time during the said term to carry on or permit to be carried on any manufacture trade profession or business or permit any auction sale to take place upon the demised premises nor use or occupy the same or any part thereof or permit or suffer the use or occupation thereof for any unlawful or immoral purpose nor do or suffer or permit to be done in upon or with respect to the demised premises any act or thing which shall cause nuisance damage or disturbance of the Landlords or the Superior Landlords or any of the lessees tenants or occupiers of any part of the said building or neighbouring premises or others in the neighbourhood and to occupy the demised premises as a private residence only and not to keep thereon any inflammable oil or substance (except in normal quantities for normal household use) or any explosive or allow any steam or other engine forge or furnace to be set up or used therein

(I) Not to obstruct in any way nor to allow any person or persons or children under the control of the Lessee to loiter or play in the passages stairs landings or corridors of the said building so as to be a nuisance or annoyance to the Landlords or any of the other lessees or tenants of the said building or any part thereof or cause or suffer any obstruction to be caused in the said building by bicycles perambulators boxes parcels refuse or any other article or rubbish and not to carry or permit to be carried any coal upon the main staircases and landings nor allow tradesmen or others to deliver goods except by the service stairs and not to bring into or take out of the said building any furniture or bulky material except between the hours of 9 a.m. and 5 p.m.

(J) Not to assign underlet or part with possession of the demised premises or any part thereof without the written consent of the Landlords and for every such consent given by the Landlords to pay the sum of

One guinea such consent not to be unreasonably withheld in the case of an assignment or under-letting of the whole of the demised premises to a respectable and responsible assignee or under-tenant

(K) Not to take in paying guests or lodgers or share the demised premises with any person or persons

(L) To abide by and keep the rules and regulations in the Schedule hereto or any reasonable modifications thereof or additions thereto made for the good management of the said building and for the convenience and comfort of the occupiers of the flats in the said building generally and notified in writing to the Lessee

(M) To permit the Landlords three months prior to the determination of the term if they so desire to affix a notice in a conspicuous part of the demised premises signifying they are to let and to admit persons to view the same any week day between the hours of 10 a.m. and 6 p.m. during such period by appointment

(N) To pay for all gas and electricity consumed by the Lessee on the demised premises and observe all regulations and requirements of the gas and electricity authorities and to keep the Landlords indemnified against the non-payment breach non-observance or non-performance thereof

(O) And also that it shall be lawful for the Landlords and their surveyors and agents with or without workmen from time to time and at all reasonable times during the said term to enter upon the demised premises and inspect the condition thereof and of all defects decays and wants of reparation then and there found and for which the Lessee shall be liable hereunder to give or leave notice in writing on the demised premises or any part thereof unto and for the Lessee to repair and amend the same within the space of [two] calendar months then next following after such notice within which said term the Lessee will repair and amend the same according to such notice and the covenants hereinbefore contained PROVIDED ALWAYS that if the Lessee shall make default in complying with such notice or in the performance of any of the Lessee's repairing or decorating covenants herein contained it shall be lawful for the Landlords (but without prejudice to the right of re-entry hereinafter contained) to enter upon the demised premises and execute the requisite works at the expense of the Lessee in accordance with the covenants and provisions of these presents and the expenses of such repairs shall be repaid by the Lessee to the Landlords on demand.

2. THE Landlords covenant with the Lessee as follows:—

(A) That the Lessee duly paying the said rent and observing and performing the agreements herein contained may peaceably and quietly hold and enjoy the demised premises without any interruption by the Landlords or any person lawfully claiming under them or by title paramount

(B) To keep the demised premises in structural repair and wind and water tight and insured against damage by fire and that if the demised premises or any part or parts thereof shall be destroyed or rendered uninhabitable or unfit for use by fire during the said term (except through the wilful act or neglect of the Lessee) then from the date thereof and so often as the same shall happen a just proportion of the rent hereby reserved according to the extent of the injury sustained shall cease and be suspended until the said premises shall be rebuilt or reinstated

(c) To pay the water rate and all rates charged in respect of the said building (other than any charges for gas or electric current for which the Lessee is liable)

(d) To light adequately during hours of darkness and also where necessary in the daytime the staircase and landings of the said building and to keep the same cleaned and swept and to supply and use their best endeavours to maintain at all reasonable times a constant service of hot water between the hours of 7 a.m. and midnight for domestic use and also during and between the months of [October] and [April] throughout the term for heating purposes PROVIDED that the Landlords shall not be liable in damages for any temporary interruption of such services referred to in this paragraph not attributable to their neglect or default but shall resume such services as soon as may be practicable.

3. PROVIDED ALWAYS and this Lease is upon the express condition following that is to say:—

If any rent shall be in arrear for fourteen days or upwards whether legally demanded or not or if there shall be a breach of any of the Lessee's covenants herein contained or if the Lessee or other person in whom the term hereby granted shall be vested shall become bankrupt or enter into any arrangement with his or her creditors or shall suffer execution to be levied on the demised premises the Landlords may re-enter upon any part of the demised premises in the name of the whole without giving notice to quit to the Lessee and thereupon the term created by these presents shall be determined but without prejudice to any rights or remedies of the Landlords in respect of any antecedent breach of the covenants on the part of the Lessee and conditions hereinbefore contained.

[4. PROVIDED LASTLY and it is hereby agreed that if the Lessee shall be desirous of determining the term hereby created at the expiration of —— years of the said term and of such desire shall give three calendar months' notice in writing to the Landlords by registered post then and in such case immediately after the expiration of the said —— years this present Lease and everything herein contained shall cease and be void but without prejudice to the rights of either party in respect of any antecedent breach of obligation under these presents.]

THE SCHEDULE.

Rules and Regulations.

1. No piano or other musical instrument to be used or played upon between 11 p.m. and 8 a.m. and no piano pianola gramophone wireless loudspeaker or musical instrument of any kind shall at any time be used so as to cause annoyance to any of the other occupiers of the said building.

2. The Lessee shall not park or permit or cause to be parked in the courtyard of the building any motor car except in such place as may be reserved by the Landlords for such purpose [nor in any part of the courtyard after 11 p.m.] and in particular shall not cause nuisance or annoyance to occupiers of any neighbouring flats or premises by the starting or noisy running of a car engine.

3. The Lessee shall not place any showboard name-bill placard advertisement or notice of any description upon any external parts or in

any of the windows of the demised premises or expose any wearing apparel or domestic linen or washing in or upon or outside any part of the demised premises.

4. No bird dog or other animal shall be kept by the Lessee which shall be a nuisance to the Landlords or to any of the other occupiers of the said building [or which after the keeping thereof shall have been objected to by the Landlords by notice in writing given to the Lessee or left for the Lessee on the demised premises].

5. The Landlords will supply the services of a porter but he shall be under no obligation to furnish private attendance or other private use of his services to the Lessee for private convenience and any special or extra services are to be considered as rendered by any employee of the Landlords as the servant of the Lessee and for which and the consequences whereof the Landlords will not be responsible.

6. Entrance doors of flats shall be kept shut and any lessee or occupier using the common parts of the said building between the hours of 11 p.m. and 7 a.m. shall do so quietly and take especial care to close the main entrance door and not cause any disturbance or annoyance to the other tenants.

7. The Lessee shall not place in the refuse bin ashes rubbish or other refuse after 10 a.m. on any day.

8. The Lessee shall not allow any mats to be shaken inside the said building or out of the window of the demised premises or the said building and shall not throw anything out of the said windows or place anything on the window ledges.

9. Coal shall be kept only in the storage cupboard provided for that purpose and shall only be delivered by the service stairs before 10 a.m.

In witness *etc.*

Form 7.

Trust Deed by Persons Proposing to Collect Moneys for the Benefit of a School (*a*).

(*Based on a Form settled by A. H. Withers, of Lincoln's Inn.*)

Parties. THIS TRUST DEED made this —— day of —— 19— by A of *etc.* B of *etc.* C of *etc.* and D of *etc.* (hereinafter called "the Original Trustees") WITNESSETH AND IT IS HEREBY AGREED AND DECLARED as follows:—

Name of Society. 1. THE Charity hereby founded shall be called "the —— Society".

Definition clause. 2. IN this deed the following expressions shall have the following meanings that is to say:—

(A) "*The Trustees*" means the original Trustees or other the trustees or trustee from time to time of this deed

(B) "*The Company*" means —— Limited whose registered office is at ——

(C) "*The School*" means the school known as "—— School" which was in or about the year —— established at —— in the county of —— for the teaching and education of boys

(D) "*The School boys*" means boys who are from time to time being taught at the school or wish to be taught at the school

(E) "*The trust funds*" means and includes all moneys and other property received and accepted by the Trustees upon the trusts of this deed and the investments and property from time to time representing the same or any part thereof.

Declaration of Trust. 3. THE Trustees shall hold the trust funds and the income thereof upon charitable educational trusts for the benefit of the school and the following provisions of this deed shall take effect subject to and only so far as consistent with such primary charitable trust.

Charitable objects. 4. THE primary objects of the —— Society are as follows:—

(A) to provide scholarships for the education of school boys and for that purpose to build up scholarship funds

(B) to pay all or part of the school fees payable in respect of deserving boys who shall for the time being be or wish to be educated at the school and who but for the help of the —— Society would be unable to be or to remain at the school

(C) to pay all or any part or parts of any expenses incurred or desired to be incurred by the company in maintaining and operating the school in a proper and efficient manner and in repairing renewing extending or improving the buildings plant furniture staff and conveniences of the school and the

(*a*) Stamp 10s. This Form can be adapted to meet the case of other charities where it is proposed to collect funds for the charity. In this connection Form 48 in *The Conveyancer and Property Lawyer*, vol. 4 (N.S.), p. 540, should be considered.

grounds thereof and to make or agree to make grants to the company of sums to be applied by the company for such purposes or any of them.

Powers of Trustees.

5. The Trustees shall have the following powers exercisable from time to time as the Trustees may think fit that is to say:—

(A) Power to collect donations (whether periodical or otherwise) as they may think fit

(B) Power to issue appeals for donations and periodical reports of the work of the trustees

(C) Power to use as income all or any moneys subject to the trusts of this deed including in particular moneys invested or consisting of accumulated income

(D) Power to decide to what extent and for what purpose or purposes moneys are to be applied under this deed

(E) Power to select the school boys to receive assistance hereunder and to settle in each case the extent period and conditions of such assistance

(F) Power to accumulate income

(G) Power to make and vary rules with respect to all or any matters arising under this deed including in particular (1) the meetings of trustees and of subscribers or of any class of subscribers to the —— Society (2) the appointment of patrons of the Society (3) the privileges of subscribers or any class of subscribers to the —— Society and (4) the qualifications of school boys benefiting from the charity

(H) Power to apply to any Court or Authority for any order or scheme

(I) Power to accept donations on any special trusts in connection with the school so that every donation so accepted shall be held subject to the terms and conditions of the gift.

Power to appoint trustees.

6. The power to appoint a new trustee or new trustees of this deed shall be vested in the Company.

7. This deed and the trust hereby constituted shall be construed and regulated according to the Law of England.

In witness *etc.*

Form 8.

Declaration by Deed Supplemental to a Principal Vesting Instrument Made Pursuant to Section 35 of the Settled Land Act, 1925, in Respect of Registered Land (*a*).

H.M. Land Registry.
Land Registration Act, 1925.

County [*or* County Borough].
Title No.
Property.

[*Date*] This deed is supplemental to the principal vesting deed made the —— day of —— between A and B [*trustees*] of the one part and C [*tenant for life*] of the other part whereby the land comprised in the above title was vested in the said C upon the trusts of a trust instrument of even date therewith NOW IT IS HEREBY DECLARED for giving effect to the requirements of section 35 of the Settled Land Act 1925 that the said B and X of *etc.* [*the new trustee*] are the trustees of the settlement effected by the said principal vesting deed and the said trust instrument for all the purposes of the said Act and We (*b*) the said A, B and X apply to the Registrar to modify the restriction entered on the [*date*] against the title above referred to and to enter the following restriction

No disposition under which capital money arises is to be registered unless the money is paid to the said B and X (the trustees of a settlement of whom there must be not less than two or more than four individuals unless a trust corporation is the sole trustee) or into Court

Except under an order of the Registrar no disposition is to be registered unless authorised by the Settled Land Act, 1925.

IN WITNESS *etc.*

[*Executed* (*c*) *by the said A, B and X.*]

(*a*) On the appointment of new trustees for the purposes of the Settled Land Act, 1925, s. 35 requires that a deed of declaration shall be executed. There is nothing in the Act which exempts registered land from this requirement, although the deed of declaration will not in the case of registered land become a material document of title as the register will show the change in the trusteeship.

(*b*) When the property was vested in the tenant for life a restriction will have been entered on the register under the Land Registration Rules, 1925, r. 58, Form 9. The restriction will have to be amended on the appointment of new trustees in accordance with r. 235 (2). The application for such modification is incorporated in this deed following Form 77 in the Rules.

(*c*) Under the Settled Land Act, 1925, s. 35 (2), the deed of declaration has to be executed, where the new trustee is appointed or discharged by the Court, by such person as the Court may direct; in any other case the sub-section requires it to be executed by the person, if any, having power to appoint new trustees, by the persons named in the deed of declaration as the trustees of the settlement and by any trustee who is discharged. Under the Land Registration Rules, 1925, note to Form 77, the application to modify a restriction has to be signed by the applicant, or his solicitor, and by all other persons interested or their respective solicitors. Accordingly, if the requirements as to execution of s. 35 (2) are complied with the Land Registration Rules will also be automatically satisfied.

Form 9.

Codicil by a Husband or Wife, Who Have Made Mutual Wills, Making an Annuity Payable to a Servant or Relative a First Charge on Residue where Neither Estate may be Sufficient to Pay the Annuity in Full.

I, A of *etc.* hereby declare this to be a codicil to this my will which bears date the —— day of ——

WHEREAS I and my wife [husband] having agreed to make provision for K in recognition of her loyalty and devotion to us and that such provision should take the form of an annuity of £*x* per annum now I hereby declare as follows :—

1. In the event of my surviving my wife [husband] for more than twenty-eight days my trustees shall pay out of the annual income of my residuary trust fund to K an annuity of £*x* during her life but if such annual income does not amount to £*x* in any year then in that year the whole of such income shall be paid to K in lieu of the said sum of £*x*.

2. In the event of my surviving my wife [husband] but dying within twenty-eight days of her death then my trustees shall out of such annual income pay to K such sum as after bringing into account the annual payments payable to K under the will of my wife [husband] shall amount to £*x* and no more and if the total income of the residuary trust fund arising under the will of my wife [husband] and under my will shall amount to less than £*x* then such annuity shall abate accordingly.

3. In either event such annuity shall commence from my death and be payable by equal quarterly payments the first payment thereof to be made at the expiration of three months from my death.

Testimonium and attestation.

Form 10.

Codicil to the Will of a Member of the Armed Forces Going on War Service Providing for the Application of any Duties Remitted on His Death When on Such Service (*a*).

This is a [first] Codicil to the will of me A of *etc.* which bears date the —— day of ——

WHEREAS I am a member of the armed forces and about to go on war service and in the event of my death on such service the death duties payable on my estate may be remitted in whole or in part

(*a*) Under the combined operation of the Finance Act, 1900, s. 4, the Death Duties (Killed in War) Act, 1914, s. 1, the Finance Act, 1914, s. 5, and the Finance Act, 1918, s. 44, the death duties leviable in respect of the property of a member of the armed forces, who dies on war service, are remitted in whole or in part on property passing to his widow or to other specified relatives. The intention of these Acts was, it seems, that the benefit of the relief thereby given should be apportioned rateably between the beneficiaries. It appears from the decision of the Court of Appeal in *Re Joel, Rogerson* v. *Joel*, [1943] W. N. 163, that the benefit of any such remission does not necessarily accrue to the specified relatives whom the Act intends to benefit. Lord Greene, M.R., in that case pointed out that a testator might expressly or by implication direct that the benefit of the remission should go to the specified relatives the gifts to whom were the occasion of the

Now I HEREBY DIRECT that any relief from duty which would otherwise enure for the benefit of my residuary estate generally shall be apportioned rateably between the shares of my residuary estate which I have given to X, Y and Z [and their issue] to the exclusion of the remaining residuary legatees.

[*Or* AND WHEREAS I have given and made a number of specific devises and specific and pecuniary bequests and given shares of my residuary estate to my wife and members of my family who are within the class of relatives specified in the provisions of the Finance Acts governing such remission of duty but by reason of the fact that some or all of such devises and bequests are given free of duty or for some other reason it may be that the benefit of any duty remitted will not be apportioned between my wife and the other members of my family but will fall into residue Now I HEREBY DIRECT my trustees to hold a sum of money equivalent to any duty so remitted upon trust to apportion the same rateably between my wife and the other members of my family in proportion to the amount of duty remitted in respect of the interests they severally take under this my will and I bequeath the same to them accordingly PROVIDED ALWAYS that nothing herein contained shall increase the sum paid out of my residuary estate in respect of duties or remitted duties over the sum which would have been paid if I had not died on war service AND I FURTHER DECLARE that the decision of my trustees as to the apportionment of the benefit of any relief from duty under this clause shall be conclusive and binding on all persons claiming to benefit by such remission.]

IN WITNESS *etc.*

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remissions. The above Form is suggested as a basis for directing that the benefit of any remission shall enure for the benefit of the relatives on whose account it was given. It is not easy to provide a Form which will cover all the cases which may arise. Where the beneficiary takes a gift which is expressed to be free of duty, the benefit of any remission will accrue to residue as in *Re Joel*, *supra*. Where residue is given to specified relatives and other persons, any remission of estate duty will benefit all the residuary legatees. It is comparatively simple in the case of residue for the testator to direct that the benefit of any remission shall be apportioned between those residuary legatees who are within the class of specified relatives. Where the specified relatives take duty-free gifts the matter is not so simple and they can only benefit by the remission if the testator withdraws from residue a sum equal to the remission and gives it to the specified relatives as additional legacies. This is a somewhat complicated procedure and generally it would seem that testators will be prepared for the residuary legatees to take the benefit of the remission. Where the ultimate residuary gift is only intended to sweep up small portions of the estate not applied in testamentary expenses some clauses transferring the benefit of the remitted duty to the beneficiaries in respect of whom it was given may be necessary. Such a clause may involve difficult calculations and the executors should be given power to apportion the remission and their decision should be made binding on all beneficiaries.

Form 11.

Devise and Bequest of Residue upon Trust for Sale and Conversion, with Power to Postpone Sale, with Provisions for the Payment of the Annual Liabilities of the Estate Out of Income and for the Application of Annual Payments Forming Part of the Estate as Income (*a*).

I devise and bequeath all my real and personal estate not hereby otherwise disposed of (including all property whether real or personal over which I may have any general power of appointment or disposition by will or the statutory power to dispose of entailed property) unto my executors and trustees hereinbefore named upon trust that the trustees shall sell call in and convert into money the same and shall out of the moneys arising thereby or otherwise forming part of my estate pay my funeral and testamentary expenses and debts and the

(*a*) This Form is proposed as an alternative to the common form gift of residue on trust for sale and conversion and is intended to meet the difficulties which appear to arise by reason of Bennett, J.'s, decision in *Re Fisher*, [1943] W. N. 195, and that of Uthwatt, J., in *Re Payne*, *Westminster Bank, Ltd.* v. *Payne*, 196 L. T. Jour. 153. A considerable number of estates to-day include annual payments of a terminable character, such as estates *pur autre vie*, or annuities payable for a short term of years under a policy of assurance or a service agreement. The estate may also be subject to annual liabilities, such as the liability to pay an annuity to some person for life or to pay the premiums on a policy of assurance. If no provision is made, it is clear that such an annual liability is not payable entirely out of income. An annuity payable out of the estate has to be apportioned between capital and income on the principle laid down in *Allhusen* v. *Whittell*, L. R. 4 Eq. 295. In the case of premiums payable to keep up a policy maturing on the determination of an estate *pur autre vie* which formed part of the estate, Warrington, J., held in *Re Sherry*, [1913] 2 Ch. 508, that the premiums were payable wholly out of capital. In most cases the testator would wish these payments to be met out of income and clause C of this Form is intended to provide for this.

With regard to terminable annuities which form part of the testator's estate, it was held in *Crawley* v. *Crawley*, 7 Sim. 427, which was followed in *Re Whitehead*, *Peacock* v. *Lucas*, [1894] 1 Ch. 678, that they must be treated, as between income and capital, as capital. In *Re Sherry*, *supra*, and *Re O'Hagan*, [1932] W. N. 188, these early decisions were not followed. In both these later cases the testator had given his estate upon the usual trusts for sale and conversion, with power to postpone sale, and directed the investment of the net proceeds. The residue was then settled on persons in succession. Warrington, J., in the first case and Clauson, J., in the second held that estates *pur autre vie* were income payable to the tenant for life. This view was not adopted by Bennett, J., in *Re Fisher*, *supra*. In this case the deceased died wholly intestate and accordingly his estate was held upon the statutory trusts for sale contained in s. 33 of the Administration of Estates Act, 1925. The estate included a terminable annuity payable under a policy of assurance. The deceased's widow claimed that this was income of the estate. Bennett, J., held it should have been converted at the testator's death and, until conversion, each payment as it was received must be apportioned between capital and income on the principle laid down in *Re the Earl of Chesterfield's Trusts*, 24 Ch. D. 643. A similar conclusion was reached by Uthwatt, J., in *Re Payne*, *supra*. In this case the testator by his will gave "the income arising" from his property to his wife during her life. The learned Judge held that five annual payments to be made under the testator's service agreement to his personal representatives were not income and must be apportioned between capital and income. He held these payments were part of the estate but not income of it. In every case it is a question of construction whether payments included in the estate in the nature of income pass to a tenant for life or not. In most cases it would seem that the tenant for life only takes income derived from the estate and not income which merely happens to be part of it. If the tenant for life is to take assets of an income character this should be made clear by the definition of income. If such income assets pass to the tenant for life annual liabilities should be payable out of income. Clauses C and D of this Form are intended to make income liabilities payable out of income and income assets applicable as income. The clauses balance each other and produce a consistent principle of administration.

legacies bequeathed by this my will or any codicil hereto and make provision for the payment of any annuities so bequeathed and all duties free from which any legacies or annuities may be bequeathed (but so that all legacies and annuities and the last-mentioned duties shall be paid primarily out of my personal estate) and shall invest the residue of such moneys which residuary moneys and the investments from time to time representing the same are hereinafter together referred to as my residuary estate

(A) So long as the trustees deem proper they may (without being responsible for loss) postpone the sale calling in and conversion of all or any part of the property hereinbefore given upon trust for conversion and (by way of further postponement of but without further prejudice to the foregoing trust for conversion) retain as if the same be in fact an authorised investment under this my will or not and whether producing income or not and they shall not sell any reversionary property unless they see special reason therefor

(B) The net income of any property (howsoever invested or of whatsoever description) remaining unconverted and the right to use occupy or enjoy any hereditaments or chattels remaining unconverted or unlet shall as from my death be applicable or treated as income and (subject thereto) no reversionary or other property not actually producing income shall be treated as producing or entitling anyone to receipt of income

(C) All annuities (*a*) (payable under deeds or agreements) interest yearly rents premiums on life policies and other periodical payments out of my estate (not being instalments of principal money) shall be paid out of the annual income of my residuary estate

(D) All income (*a*) and periodical sums (not being instalments of principal money) payable to me or my estate for the life or any part of the life of any person or for any term of years or other period shall be wholly treated as income of my residuary estate for the period in respect of which the same shall be payable.

Form 12.

Appointment by the Administrators of an Intestate, on the Completion of the Administration, of His Widow to be a New Trustee of the Statutory Trusts for Sale Arising under Section 33 of the Administration of Estates Act, 1925, in place of one of the Administrators to Whom a Grant had Been Made as Attorney of the Widow (*a*).

THIS DEED OF APPOINTMENT is made the —— day of —— BETWEEN A of *etc.* [*continuing trustee*] of the first part B of *etc.* [*retiring trustee*] of the second part and C of *etc.* [*new trustee*] of the third part — Parties.

WHEREAS X late of *etc.* (hereinafter called "the Intestate") died on the —— day of —— intestate leaving him surviving his widow C and two children namely D and E born respectively on the —— day of —— and the —— day of —— — Recitals: death;

AND WHEREAS letters of administration to the estate of the Intestate were on the —— day of —— granted out of the Principal [District] Probate Registry to the said A and to the said B the duly nominated attorney of the said C widow of the intestate for the purpose of obtaining letters of administration to his estate — grant of administration

AND WHEREAS all the funeral and testamentary expenses and debts of the testator and the duties payable on his death and the sum of £1,000 together with interest at 5 per cent. from the date of the death of the Intestate payable to the said C have been fully paid and satisfied by the said A and B — payment of debts, etc.;

AND WHEREAS the residuary estate of the Intestate (except such parts thereof as consisted of authorised investments and the land specified in the First Schedule hereto) was got in and realised by the said A and B and the clear proceeds thereof (after such payments as aforesaid) were re-invested by them pursuant to the provisions of section 33 of the Administration of Estates Act 1925 and are now represented by the investments specified in the Second Schedule hereto — realisation estate;

AND WHEREAS the said B is desirous of being discharged from the said statutory trusts for sale applicable to the Intestate's estate under section 33 of the Administration of Estates Act 1925 — desire to retire;

(*a*) Stamp 10s. Where the estate of an intestate is not immediately distributable by reason of a minority or the subsistence of a life interest, the administrators, when they have fully administered the estate, cease to be personal representatives and become trustees. When this happens they should execute an assent in writing vesting any unsold land in themselves upon the trusts for sale affecting the property under s. 33 of the Administration of Estates Act, 1925: see *Re Yerburgh*, [1928] W. N. 208. If this is done, should the administrators die before the distribution of the estate a grant *de bonis non* will not be necessary.

This form is designed to meet the case where a grant has been made to an attorney for the intestate's widow. It can also be used for the more ordinary case where on the close of the administration one of the administrators desires to retire and a new trustee is appointed to administer the trust for sale. Where an administrator, who has taken out a grant as attorney for someone else, wishes to retire it is not entirely clear that as such attorney he has power to appoint a trustee in his place of the trusts arising under s. 33 of the Administration of Estates Act, 1925. Such an attorney desiring to retire on the termination of the period of administration should obtain the consent of the donor of the power to the appointment of a new trustee. In this case the attorney is appointing the widow, the donor of the power, to act as trustee, so no difficulty arises.

desire to appoint.

And whereas the said A and B are desirous of appointing the said C to be a trustee of the statutory trusts for sale applicable to the Intestate's estate in place of the said B

And whereas (*b*) it is intended that the land more particularly specified in the First Schedule hereto shall be forthwith vested in the said A and C by an assent in writing

And whereas it is intended that the several investments specified in the Second Schedule hereto shall be forthwith transferred into the joint names of the said A and C

Now this deed witnesseth as follows:—

Appointment.

1. In exercise of the power for this purpose by the statute in that behalf given to the said A and B and of every or any other power enabling them in this behalf they the said A and B hereby appoint the said C to be a trustee in the place of the said B and to act jointly with the said A for the purposes of the statutory trusts for sale applicable to the estate of the Intestate under section 33 of the said Act or for such of the same purposes as are still subsisting and capable of taking effect.

2 (*c*). Notwithstanding section 40 of the Trustee Act 1925 no vesting declaration shall be implied herein.

In witness *etc.*

The First Schedule.

[*To contain particulars of the unsold land.*]

The Second Schedule.

[*To contain particulars of the trust investments.*]

(*b*) See next Form.

(*c*) This declaration negativing the operation of s. 40 of the Trustee Act, 1925, should be inserted in order that the appointment may not operate to vest the land in the new trustees.

Form 13.

Assent by Administrators, Who Have Completed the Administration, to the Vesting of Freeholds and Leaseholds in One of Themselves and a New Trustee as Trustees for Sale under Section 33 of the Administration of Estates Act, 1925, to Go With the Preceding Precedent (*a*).

Parties.

THIS ASSENT is made the —— day of —— BETWEEN A of *etc.* and B of *etc.* (hereinafter called "the Personal Representatives") of the one part and the said A and C of *etc.* (hereinafter called "the Trustees") of the other part

Recitals of death and grant.

WHEREAS X late of *etc.* died intestate on the —— day of —— and letters of administration to his estate were on the —— day of —— granted out of the Principal [District] Probate Registry to the Personal Representatives

NOW THIS ASSENT WITNESSETH as follows:—

1. The Personal Representatives as personal representatives of the said X hereby assent to the vesting in the Trustees of ALL and SINGULAR the freehold and leasehold properties respectively described in the first and second parts of the Schedule hereto TO HOLD the same unto the Trustees as to the said freehold property in fee simple as to the said leasehold properties for the unexpired residue of the several terms of years for which the same are held respectively upon trust to sell the same and to hold the net proceeds of sale upon the trusts applicable thereto by virtue of the Administration of Estates Act 1925 (*b*).

2. The Personal Representatives hereby declare that they have not previously given or made any assent or conveyance in respect of any legal estate in the premises or any part thereof.

3. The Personal Representatives hereby acknowledge the right of the Trustees to production of the letters of administration to the estate of the said X (possession of which is retained by them) and to delivery of the copies thereof.

IN WITNESS *etc.*

THE SCHEDULE.

Part 1.

[*To contain particulars of the freehold properties.*]

Part 2.

[*To contain particulars of the leasehold properties.*]

(*a*) Stamp 10s. if under seal. If under hand only, no stamp required. Notice of this assent should be endorsed on the letters of administration: see the Administration of Estates Act, 1925, s. 36 (5). This assent is intended to be used in conjunction with the next preceding Form, and see the notes to that Form. It should be executed after the appointment of new trustees.

(*b*) If the deceased's estate included the benefit of any covenants relating to his land the benefit of these, and the right to enforce them, should be expressly assigned in this assent: see *The Conveyancer and Property Lawyer* (N.S.), Vol. 7, p. 279, clause 4.

Form 14.

Assignment by One of Several Tenants in Common of His Share of the Proceeds of Sale of Freeholds to Another and Conveyance of the Legal Estate (*a*).

Parties. THIS DEED is made the —— day of —— BETWEEN A of *etc.* B of *etc.* C of *etc.* D of *etc.* (hereinafter together called the "Original Trustees") of the first part the said A (hereinafter called "the Vendor") of the second part the said B (hereinafter called "the Purchaser") of the third part and the said B, C and D (hereinafter called the "New Trustees") of the fourth part

Recitals: WHEREAS

purchase of land; (1) By a deed of conveyance (hereinafter called "the Principal Deed") made the —— day of —— between X of the one part and the Original Trustees of the other part the dwelling-house and land known as —— situate at —— therein more particularly described was conveyed to the Original Trustees in fee simple upon trust to sell the same and to stand possessed of the net proceeds of sale in trust as to one equal sixth part thereof for the Vendor as to a further one equal sixth part thereof for the Purchaser as to a further one equal sixth part thereof for the said C and as to the remaining three equal sixth parts thereof for the said D

agreement for sale of share; (2) The said Vendor has agreed with the Purchaser for the sale and transfer to him of the one equal sixth part or share of the Vendor in the said premises comprised in the principal deed and the proceeds of sale thereof for the sum of £——

agreement of trustees to join. (3) The Original Trustees have agreed to join in these presents in manner hereinafter appearing

NOW THIS DEED WITNESSETH as follows:—

Assignment of share. 1. In pursuance of the said agreement and in consideration of the sum of £—— now paid to the Vendor by the Purchaser (the receipt of which sum the Vendor hereby acknowledges) the Vendor as beneficial owner hereby assigns unto the Purchaser ALL THAT one equal sixth part share and interest of the Vendor of and in the said premises subject to the trusts of the principal deed and the proceeds of sale thereof TO HOLD unto the Purchaser absolutely.

Conveyance of legal estate to remaining tenants in common. 2. The Original Trustees as trustees by the direction of the Vendor and of the Purchaser hereby convey and release unto the New Trustees ALL THAT dwelling-house and land known as —— situate at —— as

(*a*) Stamp *ad valorem*. This deed operates to transfer both the beneficial interest of the tenant in common who is selling to his co-tenant and to convey the legal estate in the property to the tenants in common who remain beneficially interested in it. The transaction could be effected by two deeds: First, by a deed assigning the beneficial interests to the purchaser, which would operate in equity only; secondly, by a deed by which the owner retired from the trusteeship, which would leave the legal estate in the continuing tenants in common. There seems, however, no advantage in effecting the transaction by two deeds. The fact that the equitable title is brought on to the legal title does not prejudice the trust for sale and, if ultimately all the beneficial interests become vested in one person, it may be convenient to have the beneficial title available with the legal title.

the same is more particularly described in the Principal Deed TO HOLD the same unto the New Trustees in fee simple.

Trusts of proceeds o sale.

3. The New Trustees shall stand possessed of the said premises hereby assured upon trust to sell the same or any part thereof (with full power to postpone sale) and to stand possessed of the net proceeds of sale after payment of all outgoings in trust for the New Trustees in the proportions following namely as to two equal sixth parts thereof in trust for the Purchaser as to one equal sixth part thereof for the said C and as to the remaining three equal sixth parts thereof in trust for the said D.

4. Pending (*b*) the sale of the whole of the property hereby assured pursuant to the trust for sale in that behalf hereinbefore declared the New Trustees or other the trustees for sale hereof for the time being shall during the joint lives of the New Trustees and the life of the survivors and survivor of them and twenty-one years after the death of such survivor have the same full and unrestricted power of dealing with or disposing of the said property or any part thereof (whether by way of sale gift conveyance mortgage lease licence or otherwise) for any purpose and in any manner in all respects as a sole absolute owner thereof.

5. [*Statement as to values if required.*]

IN WITNESS *etc.*

(*b*) These powers must not be capable of being exercised beyond the perpetuity period: *Re Allott*, [1924] 2 Ch. 498.

Form 15.

Lease for Twenty-one Years of a Dwelling-house, which has Suffered War Damage, Where Only Part of the Premises is Capable of Beneficial Occupation. Provisions for the Payment of Less Than the Standard Rent Until the Whole Property is Rendered Fit and for the Repair of the War Damage with Provisions for the Determination of the Lease by the Lessee at the End of the First Seven or Fourteen Years or by the Lessor in the Event of a Value Payment being Made (*a*).

Parties. THIS LEASE is made the —— day of —— BETWEEN A of *etc.* (hereinafter called "the Lessor" which expression shall where the context so admits include the estate owner or estate owners for the time being of the reversion of the premises hereby demised expectant on the term hereby granted) of the one part and B of *etc.* (hereinafter called "the Lessee" which expression shall where the context so admits include his executors administrators and assigns) of the other part

Witnesseth. WITNESSETH that in consideration of the rents covenants and conditions hereinafter reserved and contained and on the part of the Lessee to be paid observed and performed the Lessor doth hereby

Demises. demise unto the Lessee ALL THAT messuage and tenement situate and

Parcels. known as No. —— in —— Road in the parish of —— in the county

Habendum. of —— TO HOLD the same unto the Lessee from the —— day of —— for the term of twenty-one years determinable as hereinafter mentioned Paying therefor yearly during the said term hereby granted the respective rents (*b*) following that is to say during the first and second years of the said term the yearly rent of £—— and if at the expiration of the second year of the said term the premises shall not have been reinstated and the war damage made good for such further period as the premises shall not have been reinstated and the war damage made good or for a further period of two years whichever is the lesser the yearly rent of £—— and during every subsequent year of the said term the yearly rent of £—— such respective rents to be paid without any deduction except for [land tax and] landlord's property tax by equal quarterly payments on the four usual quarter

(*a*) Stamp *ad valorem* on the rent. Under the War Damage Act, 1943, s. 9, the right to receive a payment of cost of works vests in the person by whom the cost of executing the works is incurred. Where premises have suffered war damage they can be let and the duty of repairing the war damage can be placed on the tenant, who, on executing the repairs, will be entitled under s. 9 to receive the payment of cost of works. The Landlord and Tenant (War Damage) Act, 1939, s. 1 (1), provides that any obligation to repair in a disposition shall not extend to the imposition of any liability to make good war damage. This section is so widely framed that it would seem to cover not only leases made before the war damage occurred, which plainly are within the intention of the Act, but also leases of property in a damaged condition. Having regard, however, to the provisions of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, s. 5 (4), it is now reasonably clear that where a payment of cost of works is made, the parties can agree as to which of them shall repair the war damage and there is no objection to the landlord placing this burden on the tenant.

(*b*) If this is the first letting of the property and it falls within the scope of the Rent Restrictions Acts the rent fixed by this lease is a progressive rent with s. 12 (1) (a) of the Rent Restriction Act, 1920, as varied by the Act of 1939, and the last and highest rent payable will become the standard rent: *Bryanston Property Co., Ltd.* v. *Edwards*, [1943] W. N. 244.

days in every year the first of such payments to be made on the —— day of —— next And also paying (*c*) by way of further or additional rent from time to time a sum or sums of money equal to the amount which the Lessor may expend in effecting or maintaining the insurance of the said premises against loss or damage by fire as hereinafter mentioned such last-mentioned rent to be paid without any deduction on the quarterly day for payment of the rent next ensuing after the expenditure thereof. Insurance rent.

And the Lessee hereby covenants with the Lessor in manner following that is to say:— Lessee's covenants:

1. That the Lessee will during the continuance of the term hereby granted pay the said respective yearly and other rents or sums of money hereinbefore reserved and made payable at the times and in the manner at and in which the same are respectively hereinbefore reserved and made payable without any deduction (except as aforesaid). to pay rent

2. And also will from time to time and at all times during the said term pay and discharge all rates taxes duties charges assessments and outgoings whatsoever (whether parliamentary parochial local or of any other description) which are now or may at any time hereafter be assessed charged or imposed upon or payable in respect of the said demised premises or the owner or occupier in respect thereof [the land tax and] landlord's property tax only excepted. to pay rate taxes and outgoings;

3. And also will under the inspection and to the satisfaction of the surveyor for the time being of the Lessor repair and make good all war damage to the dwelling-house and buildings hereby demised and the offices and outbuildings thereto annexed and will (*d*) reinstate the same as soon as is reasonably practicable in the form in which they existed immediately before the occurrence of the damage and also will reinstate all fences walls drains and other works which have suffered war damage the lessee receiving any payment of cost of works made by the War Damage Commission in respect of such reinstatement and works under the War Damage Act 1943 or any Act or Acts replacing or amending the same. to repair war damag

4. And also will as soon as the said premises have been reinstated and the said war damage made good and thereafter once in every three years of the said term and also during the last year thereof paint the outside wood and iron [and stucco or cement work] of the said demised premises and any additional buildings which may at any time during the said term be erected thereon with two coats of good oil and white lead paint in a proper and workmanlike manner. to paint outside ever three years

5. And also will as soon as the said premises have been reinstated and the said war damage has been made good and thereafter once in every seven years of the said term and also during the last year thereof paint all the inside wood and iron work usually painted of the said demised premises and any such additional buildings as aforesaid with three coats of good oil and white lead paint in a proper and workmanlike manner. to paint inside every seven years

6. And also will as soon as the said premises have been reinstated and the said war damage has been made good from time to time and to keep in repair;

(*c*) See *House and Property Investment Co., Ltd.* v. *Kneen*, [1938] 2 K. B. 274.

(*d*) The wording of this covenant follows s. 5 (1) of the Landlord and Tenant (War Damage) (Amendment) Act, 1941.

at all times during the said term well and substantially repair cleanse maintain amend and keep the said messuage and buildings and all new buildings which may at any time during the said term be erected on and all additions made to the said demised premises and the fixtures therein and the walls fences vaults roads sewers drains and appurtenances thereof with all necessary reparations cleansing and amendments whatsoever.

to deliver up at the end of the tenancy in good repair;

7. And the said demised premises so painted repaired cleansed maintained amended and kept as aforesaid will at the expiration or sooner determination of the said term quietly yield up unto the Lessor together with all additions and improvements made thereto in the meantime and all fixtures of every kind in or upon the said premises or which during the said term may be affixed or fastened to or upon the same except the tenant's fixtures.

to permit Lessor to enter and view;

8. And also will permit the Lessor or his agents at any time to enter the said premises and examine the state of repair and condition thereof And will repair and make good all defects of which notice in writing shall be given by the Lessor to the Lessee within three calendar months after the giving of such notice.

to permit Lessor to repair on default by the Lessee;

9. And also that if the Lessee shall at any time make default in the performance of any of the covenants hereinbefore contained for or relating to the reinstatement of the said premises or their repair it shall be lawful for the Lessor (but without prejudice to the right of re-entry under the clause hereinafter contained) to enter upon the said premises and reinstate the said premises and make good the war damage or repair the same at the expense of the Lessee in accordance with the covenants and provisions of these presents and the expenses of such repairs shall be repaid by the Lessee to the Lessor on demand Provided always that if the Lessor reinstates and makes good the war damage he shall be entitled to receive the payment of cost of works made by the War Damage Commission and the amount payable by the Lessee to the Lessor under this clause shall be reduced by the amount of any such payment of cost of works made to the Lessor.

to repay to Lessor sums paid for insuring;

10. And also will repay to the Lessor all sums which he shall expend in pursuance of the covenant of the Lessor hereinafter contained for insuring the said messuage buildings and premises against fire every such sum to be so repaid on the quarterly day for the payment of rent under the demise next ensuing after the expenditure thereof.

not to make alterations in premises;

11. And also before making any alterations in the said messuage or the outbuildings thereof or erecting any other buildings on the said demised premises or any part thereof will obtain the approval in writing of the Lessor to the plans and specifications of such intended alterations or buildings and make or erect the same in such manner as shall be so approved and not in any other manner and in the event of the War Damage Commission requiring any modifications in the plans for reinstatement the Lessee will not enter into any agreement with the said Commission except with the consent in writing of the Lessor.

not to create a nuisance;

12. And also that no act or thing which shall or may be or become a nuisance damage annoyance or inconvenience to the Lessor or his tenants or the occupiers of any adjoining or neighbouring houses

or the neighbourhood shall be done upon the said premises or any part thereof.

13. And also will not assign transfer underlet or part with the possession of the said premises or any part thereof or part with or share the possession or occupation thereof or of any part thereof (otherwise than by will) [or by underletting the same with or without the furniture therein for any term not exceeding one year] without the previous consent in writing of the Lessor but so that such consent shall not be withheld to an assignment or underletting of the said premises to a respectable and responsible person. not to assign or underlet without a licence;

14. And also will not assign or underlet the said premises or any part thereof for all or any part of the said term without giving the Lessor the first refusal thereof. to give Lessor right of pre-emption in case of assignment.

And the Lessor hereby covenants with the Lessee in manner following:—

1. That the Lessor will at all times during the said term (unless such insurance shall be vitiated by an act of the Lessee) insure and keep insured the said demised messuage and premises against loss or damage by fire in some insurance office of repute in the sum of £—— at least and will whenever required produce to the Lessee the policy or policies of such insurance and the receipt for the last premium for the same And further that in case of destruction of or damage to the said premises or any part thereof by fire the Lessor will with all convenient speed spend and lay out all moneys received in respect of such insurance in rebuilding or reinstating in a good and substantial manner the premises so destroyed or damaged and in case such moneys shall be insufficient for such purpose will make good such deficiency out of his own moneys. Lessor's covenants: to insure;

2. And that the Lessee paying the rent hereby reserved and performing and observing the several covenants conditions and agreements herein contained and on his part to be performed and observed shall and may peaceably and quietly hold and enjoy the said premises hereby demised during the term hereby granted without any lawful interruption or disturbance from or by the Lessor his successors in title or any person or persons claiming under or in trust for him or them for quiet enjoyment.

Provided that in case the said messuage buildings and premises or any part thereof shall at any time be destroyed or so damaged by fire explosion or otherwise as to be unfit for occupation or use [or shall at any time be condemned by any authority having jurisdiction for such purpose as a dangerous building and shall on that account be required to be pulled down] and shall not be rebuilt or reinstated by the Lessor within three calendar months after such destruction or damage or the commencement of such pulling down then and in such case (unless the destruction or damage shall have been caused by fire and the insurance of the premises shall have been forfeited by the act or default of the Lessee) the rents hereby reserved or a fair and just proportion thereof according to the nature and extent of the damage sustained shall from and after the expiration of such three months and until the premises shall have been rebuilt or reinstated and made fit for occupation or use be suspended and cease to be payable and in case of dispute as to the proportion or period of such abatement the

same shall be referred to arbitration pursuant to the provision in that behalf hereinafter contained such abatement to be in full satisfaction for all claims for damages by the Lessee against the Lessor arising out of such destruction or damage or pulling down

Power for Lessee to determine.

PROVIDED ALWAYS and it is hereby agreed that if the Lessee shall be desirous of determining this present lease at the expiration of the first seven or fourteen years of the term hereby granted and of such his desire shall give —— calendar months' previous notice in writing to the Lessor or leave the same at or send the same by registered letter to his usual or last-known place of abode in England and shall pay all the rent and perform and observe all the covenants hereinbefore reserved and contained and on the part of the Lessee to be paid performed and observed up to such determination then and in such case immediately after the expiration of the said term of —— or —— years as the case may be this present lease and everything herein contained shall cease and be void without prejudice to any claim by either party against the other in respect of any antecedent breach of any covenant or condition herein contained

Power for Lessor to determine if value payment made.

AND PROVIDED (*e*) always and it is hereby agreed that if the War Damage Commission shall give notice of their final determination to make a value payment in respect of the demised premises or part thereof and the Lessee shall be desirous of determining the present lease and of such desire shall give —— calendar months' notice in writing to the Lessor in manner aforesaid or if the Lessor shall be desirous of determining this present lease and of such desire shall give —— calendar months' previous notice in writing to the Lessee or leave the same for him on any part of the demised premises then and in such case after the expiration of such notice this present lease and everything herein contained shall cease and be void without prejudice to any claim by either party against the other in respect of any antecedent breach of any covenant or condition herein contained

Power of re-entry.

PROVIDED ALWAYS and these presents are upon this condition that if the said yearly or other rents hereby reserved or any of them or any part thereof shall at any time be in arrear and unpaid for twenty-one days after the same shall have become due (whether any formal or legal demand therefor shall have been made or not) or if the Lessee shall at any time fail or neglect to perform or observe any of the covenants conditions or agreements herein contained and on his part to be performed and observed [or if the Lessee while the said demised premises or any part thereof shall remain vested in him shall become bankrupt or have a receiving order made against him or enter into any arrangement or composition for the benefit of his creditors or permit any execution to be levied on the demised premises or if the assigns of the Lessee being a company shall enter into liquidation whether compulsory or voluntary (not being merely a voluntary liquidation for the purpose of amalgamation or reconstruction)] then and in any such case it shall be lawful for the Lessor or any person or persons

(*e*) Unless the War Damage Commission has made a final determination as to the kind of payment to be made, this clause seems advisable as, if a value payment is made, the lessor may wish to pocket the payment and sell the site unencumbered by any lease, and the lessee will probably not wish to continue to hold a lease where he cannot obtain the cost of reinstatement from the Commission.

duly authorised by him in that behalf into or upon the said hereby demised premises or any part thereof in the name of the whole to re-enter and the said premises peaceably to hold and enjoy thenceforth as if these presents had not been made without prejudice to any right of action or remedy of the Lessor in respect of any antecedent breach of any of the covenants by the Lessee hereinbefore contained

And it is hereby declared that if at any time hereafter any dispute doubt or question shall arise between the Lessor and the Lessee touching the construction meaning or effect of these presents or any clause or thing herein contained or their respective rights or liabilities under these presents or otherwise in relation to the premises including any matter which under the Landlord and Tenant Act 1927 would but for this present clause be determinable by the appropriate tribunal pursuant to the provisions of the said Act or in case any valuation shall require to be made under the provisions hereinbefore contained then every such dispute doubt question estimate or valuation shall be referred to the arbitration or decision of two different persons one to be appointed by each party and their umpire and these presents shall be deemed to be a submission to arbitration within the Arbitration Acts 1889 to 1934 or any statutory modification or re-enactment thereof for the time being in force.

In witness *etc.*

Form 16.

Declaration of Trust for the Benefit of Named Beneficiaries, the Income and Capital to be Distributed to Such of Them as the Trustee Thinks Fit, and After Death of Surviving Beneficiary Any Capital Remaining Undistributed to be Held for a Named Charity (*a*).

Name, address and description.

THIS DECLARATION OF TRUST made by me —— of —— in the county of —— the —— day of —— 19— WITNESSETH as follows :—

Interpretation clause.

1. Where the context so requires or admits the expression :—

(a) "The Trust Fund" shall mean and include the sum of £100 now in my hands and the investments from time to time representing the same and any other moneys or investments which shall hereafter be added to the aforesaid sum of £100 to the intent that the same shall or may be held by the Trustee or Trustees for the time being of these presents upon the trusts hereof

Name of party executing this deed.

(b) "The Trustee" shall mean and include me the said —— and any other person or persons who by virtue of an appointment in that behalf or by operation of law shall from time to time be the Trustee or Trustees of these presents

(c) "The Beneficiaries" shall mean include and be the several persons whose respective names and addresses are set out in the First Schedule hereto

(d) "The Charity" shall mean and include the charitable institution whose name and address is set out in the Second Schedule hereto and any other charitable institution which shall (if at all) hereafter take over and acquire the property and assets of the said charitable institution named in the said Second Schedule hereto.

Duration of trust.

2. The Trustee shall during the joint lives of the Beneficiaries and the lives or life of the survivors for the time being or last survivor of the Beneficiaries stand possessed of the trust fund and the income thereof upon the trusts and with and subject to the powers and provisions respectively following :—

Income.

(a) The Trustee shall pay the income of the trust fund to such one or more of the Beneficiaries for their his or her own use and benefit as the Trustee shall in his absolute and uncontrolled discretion determine And in the exercise of the foregoing discretion the Trustee may distribute the income aforesaid amongst such of the Beneficiaries as shall be selected by him in such proportions as the Trustee shall from time to time determine

Power to realise.

(b) The Trustee shall be entitled in his absolute and uncontrolled discretion at any time and from time to time to realise and convert into money either the whole or any part or parts of the trust fund and

(*a*) Stamp *ad valorem*. This Form and the next Form were settled by Mr. C. R. D. Richmount, of Lincoln's Inn.

It is anticipated that, a discretionary period being created, there need be no "passing" within the meaning of the Finance Act, 1894, until the death of the last but one of the beneficiaries.—C. R. D. R.

in the like discretion the Trustee shall be entitled to distribute and pay the net proceeds of such realisation and conversion amongst and to such one or more of the Beneficiaries and if more than one of the Beneficiaries in such proportions as the Trustee shall in his absolute discretion select and determine.

Capital on death of last beneficiary for charity.

3. After the death of the last survivor of the Beneficiaries the Trustee shall stand possessed of the trust fund or such parts thereof as shall not have been distributed by the Trustee in the exercise of the discretionary powers in that behalf hereinbefore conferred upon or otherwise vested in the Trustee upon trust (subject to the proviso next below set out) for the Charity absolutely PROVIDED ALWAYS that the Charity shall not be entitled to call upon the Trustee in any way to account for the exercise (if any) by the Trustee of the discretionary powers or trusts set out and contained in clause 2 (b) hereof.

Investment clause.

4. (i) Any moneys for the time being liable to be invested by the Trustee and comprising the trust fund or some part thereof may at the discretion of the Trustee be invested in or upon such shares stocks funds securities or other investments (including the purchase of freehold or leasehold properties) in any part of the world and whether involving liability or not as the Trustee shall in his absolute discretion think fit and so that the Trustee shall be empowered to invest and transpose the investments of trust moneys in the same unrestricted manner as if the Trustee were the beneficial owner of such moneys

(ii) PROVIDED ALWAYS that any freehold or leasehold properties purchased by the Trustee with moneys forming part of the Trust Fund shall be conveyed or assigned (as the case may require) to the Trustee upon trust to sell the same with power to postpone such sale for and during such period of time as the Trustee shall in his absolute discretion think fit

Power to borrow.

(iii) The Trustee shall have power at any time and from time to time to borrow or raise such sum or sums as the Trustee in the absolute discretion of the Trustee shall determine and for such purpose the Trustee shall be entitled to mortgage or charge in such form and upon such terms and conditions in all respects as the Trustee shall in the like discretion think fit all or any part of the trust fund and in particular any freehold or leasehold properties for the time being and from time to time vested in the Trustee as Trustee hereof And the Trustee shall if the Trustee shall so determine cause to be inserted in any conveyance or assignment to the Trustee of any freehold or leasehold property purchased by the Trustee such provisions as the Trustee shall deem necessary or expedient for the purpose of evidencing the powers of borrowing first hereinbefore conferred upon the Trustee

(iv) Pending a sale of any property (whether freehold or leasehold) for the time being vested in the Trustee as trustee hereof the Trustee shall be entitled to demise or let the whole or any part of such property whether by means of a lease for a term of years or by means of a yearly or lesser tenancy and generally upon such terms and conditions in all respects as the Trustee in his absolute discretion shall determine And for the foregoing purposes the Trustee shall be entitled to employ such agent or agents as he shall think fit or necessary

(v) The net proceeds of any lettings effected by the Trustee of any freehold or leasehold properties vested in the Trustee after deducting

all outgoings for which the Trustee shall be liable or otherwise responsible shall for the purposes of these presents and notwithstanding any rule of law to the contrary be deemed to be and shall constitute part of the income of the trust fund.

Solicitor-trustee claim.

5. Any Trustee for the time being hereof who shall be a solicitor or engaged in any profession or business shall be entitled to charge and be paid out of the trust fund and the income thereof his usual professional or other charges for work or business done or transacted or time spent by him or his firm in the execution or otherwise in relation to the trusts hereof including therein any work or business which he might as a Trustee have been required to do or transact in person.

See, in particular, s. 36 (6) of the Trustee Act, 1925.

6. The statutory power of appointing a new or additional trustee or new or additional trustees hereof is applicable hereto.

THE FIRST SCHEDULE ABOVE REFERRED TO.

Names, etc., of beneficiaries other than charity.

Name	Address	Description

Name of charity.

THE SECOND SCHEDULE ABOVE REFERRED TO.

Name	Address

IN WITNESS *etc.*

Form 17.

Appointment of New Trustee of the Preceding Declaration of Trust (*a*).

THIS APPOINTMENT is made the —— day of —— 19— BETWEEN —— of —— in the county of —— (hereinafter called "the Appointor") of the one part and —— of —— in the county of —— (hereinafter called "the New Trustee") of the other part

WHEREAS :—

Recitals: supplemental to deed of trust.

(1) This appointment is supplemental to a Deed of Declaration of Trust under the hand and seal of the Appointor and bearing date the —— day of —— 19— (hereinafter referred to as "the Settlement") whereby the Appointor declared certain trusts in regard to the fund therein described as "the trust fund" for the benefit of the several persons and the charity respectively named in the First and Second Schedules respectively thereto and whereby it was provided that the statutory power of appointing a new or additional trustee or new or additional trustees thereof was applicable thereto

See s. 36 (6) of Trustee Act, 1925.

(2) The Appointor being the sole and original trustee of the settlement is desirous of appointing the New Trustee to be an additional trustee of the settlement

(3) Particulars of the funds or investments now subject to the trusts of the settlement are set forth in the Schedule hereto and it is intended that such funds or investments shall forthwith be transferred into the joint names of or delivered to the Appointor and the New Trustee

NOW THIS APPOINTMENT WITNESSETH as follows :—

1. In exercise of the power for this purpose conferred upon him by the statute in that behalf and of every or any other power him hereunto enabling he the Appointor hereby appoints the New Trustee to be a trustee or an additional trustee of the settlement jointly with the Appointor.

2. The Appointor and the New Trustee hereby declare that they will stand possessed of the funds or investments specified in the said Schedule hereto when the same shall have been so transferred or delivered as aforesaid upon the trusts and with and subject to the powers and provisions applicable thereto under the settlement or otherwise.

IN WITNESS *etc.*

THE SCHEDULE ABOVE REFERRED TO.

(*a*) Stamp 10s.

Form 18.

Bequest of a Business to a Son, Book Debts being Payable to, and Liabilities Paid Out of, the Testator's General Estate (*a*).

I BEQUEATH to A of *etc.* the goodwill of my trade or business of a —— carried on under the style or name of —— and the stock-in-trade machinery plant and effects employed therein or belonging thereto and the benefit of all contracts subsisting in respect of the said business except that the said contracts shall be valued by my Trustees as at the date of my death according to the amount of work which shall then have been done and the amount of such valuation shall form part of my general estate and shall be a debt due and owing to my estate by the said A but as to the benefit of all work then remaining to be done on the said contracts I bequeath the same to the said A absolutely and beneficially AND I declare that all book debts and moneys due to me in respect of the said business or standing to the credit of my business account at my bankers at my death shall form part of my general estate and that All debts and liabilities due or subsisting in respect of the said business at my death shall be paid out of my general estate and that the said A shall discharge and indemnify my general estate from all debts and liabilities to accrue due after my death in respect of the said business and if required by any executor or trustee for the time being of this my will shall enter into a bond or covenant at the expense of my general estate to discharge and indemnify my general estate as aforesaid.

(*a*) This Form was drafted by Mr. Philip S. Brown, of Warton, near Preston, Solicitor. Where a testator has a small business which he wishes to bequeath to a son, *e.g.*, working in the business with him, this clause is more useful than the more usual one of an outright gift of the business, its assets, capital, stock-in-trade and liabilities. In many cases the business is the testator's chief asset and an outright bequest of it may be unfair to the other children. The son could, of course, be appointed a special executor of the business, but this would entail a special grant and would give the other executors very little power to determine the amount due to his general estate in respect of the balance of assets over liabilities.

Form 19.

Form of Conveyance Where Land is Subject to a Trust for Sale and the Legal Estate is Vested in a Custodian Trustee (*a*).

(*Based on a draft settled by A. H. Withers, of Lincoln's Inn.*)

Parties. THIS CONVEYANCE is made the —— day of —— 19— BETWEEN —— BANK LTD. whose registered office is at —— (hereinafter called "the Bank") of the first part A B of *etc.* C D of *etc.* and E F of *etc.* (hereinafter called "the Vendors") of the second part and G F of *etc.* (hereinafter called "the Purchaser") of the third part

Recitals: estate of Bank; WHEREAS the Bank is seised of the hereditaments herein described and expressed to be hereby conveyed for a legal estate in fee simple in possession free from incumbrances

death of testator; AND WHEREAS the said hereditaments belonged at his death to X late of *etc.* deceased who died on the —— day of —— 19— and is hereinafter called "the Testator" and whose will dated the —— day of —— 19— and three codicils thereto were on the —— day of —— 19— proved in the —— Probate Registry

trust for sale; AND WHEREAS the said hereditaments are now subject to the trust for sale thereof declared by the said will and no consent or request is required in the execution of such trust

custodian trustee; AND WHEREAS the Bank is the custodian trustee of the trusts declared by the said will and codicils of the Testator and holds the said hereditaments as such custodian trustee

managing trustees; AND WHEREAS the Vendors are the managing trustees of the trusts declared by the said will and codicils of the Testator and are the persons to execute the said trust for sale declared by such will and codicils

agreement for sale; AND WHEREAS the Vendors as such managing trustees as aforesaid and in execution of the aforesaid trust for sale have agreed with the Purchaser for the absolute sale to the Purchaser at the price of £—— of the said hereditaments and the fee simple thereof free from incumbrances

concurrence of Bank. AND WHEREAS the Bank has agreed at the request of the Purchaser to join in this conveyance for the purposes and in the manner hereinafter appearing

NOW THIS CONVEYANCE WITNESSETH and it is hereby agreed and declared as follows:—

Receipt of purchase moneys. 1. THIS conveyance is executed in pursuance of the aforesaid agreement for sale and in consideration of the sum of £—— on or before the execution of this conveyance paid by the Purchaser by the direction of the Vendors to the Bank (*b*) the receipt whereof the Bank (as such custodian trustee as aforesaid) hereby acknowledges and the payment whereof in manner aforesaid the Vendors hereby acknowledge.

Conveyance by Bank. 2. THE Bank as trustee and by the direction of the Vendors

(*a*) Stamp *ad valorem* on the purchase price. A custodian trustee is appointed under the Public Trustee Act, 1906, s. 4, and the legal estate in the trust land is vested in him. A trust corporation has, under the Public Trustee (Custodian Trustee) Rules, 1926, made under sub-s. (3) of s. 4, power to act as a custodian trustee.

(*b*) Under s. 4 (2) (e) the purchase moneys must be paid to the custodian trustee

hereby conveys and the Vendors as trustees and in execution of the aforesaid trust for sale hereby convey and confirm unto the Purchaser ALL THAT [*here insert description of property*] TO HOLD the same UNTO the Purchaser in fee simple.

Acknowledgment of right to production of documents.

3. THE Bank hereby acknowledges the right of the Purchaser to production of the documents specified in the Schedule hereto (the possession of which documents is retained by the Bank) and to delivery of copies thereof.

IN WITNESS *etc.*

THE SCHEDULE.

Form 20.

Conveyance to Trustees of Land to be Held on the Charitable Trusts Declared by a Trust Deed of Even Date (*a*).

Parties.

THIS DEED OF GIFT made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called "the Donor") of the one part and B of *etc.* and C of *etc.* (hereinafter called "the Charity Trustees") of the other part.

Recitals: title of donor.

WHEREAS the Donor is the estate owner in respect of the fee simple of certain freehold hereditaments situate at —— in the County of —— as the same are specified in the Schedule hereunder written and is desirous of giving and assuring the same to the Charity Trustees in manner and upon the trusts hereinafter expressed and referred to.

Conveyance.

NOW THIS DEED WITNESSETH that for effectuating his said desire the Donor hereby gives grants and conveys unto the Charity Trustees ALL AND SINGULAR the lands hereditaments and premises specified in the said Schedule hereto TO HOLD unto the Charity Trustees in fee simple upon the trusts and with and subject to the powers and provisions declared and contained concerning the same in a Declaration of Trust already engrossed and intended to bear even date with but to be executed immediately after these presents and to be made by the Charity Trustees. And it is hereby declared that the trusts aforesaid are charitable trusts (*b*). And that the statutory power of appointing new trustees shall apply to these presents.

[*Insert undertaking for production of documents if required.*]

IN WITNESS *etc.*

THE SCHEDULE.

[*To contain a description of the property.*]

(*a*) Stamp 10s., to be adjudicated. This and the succeeding declaration of trust provide for the establishment of a convalescent and rest home for the employees of a company. As the land is to be held on charitable trusts it is deemed to be settled land under s. 29 of the Settled Land Act, 1925. It is not necessary in the case of land conveyed on charitable, ecclesiastical or public trusts that the trusts should be declared by a separate instrument (see s. 29 (1) (b)). However, unless it is thought that the trustees will retain the land indefinitely for the purposes of the trust, it is probably convenient to have the trusts declared by two deeds, so that on any sale the charitable trusts are not in the deed dealing with the legal estate.

(*b*) This statement is necessary under s. 29 (1) (b).

Form 21.

Trust Instrument Declaring Charitable Trusts of Land to be Used as a Home of Rest for the Employees and their Families of a Company Together with the Settlement of an Endowment Fund (*a*).

Parties. THIS DECLARATION OF TRUST made the —— day of —— 19— between A of *etc.* of the one part and B of *etc.* and C of *etc.* (hereinafter called "The Trustees") of the other part

Recitals: conveyance to Trustees; WHEREAS by a Deed of Gift and Conveyance of even date with but executed before these presents and made between the said A of the one part and the Trustees of the other part the freehold hereditaments specified in the First Schedule hereto were conveyed to the Trustees in fee simple upon the trusts and with and subject to the powers and provisions declared and contained concerning the same in a declaration of trust therein referred to as of even date therewith and meaning these presents

transfer of investments. AND WHEREAS with a view to making further provision for the charitable objects and trusts for the purposes of which the said Deed of Gift was made the said A has caused to be transferred into the joint names of the Trustees the stocks funds and investments specified in the Second Schedule hereto

Declaration of trust. NOW THIS DEED WITNESSETH that the said A and the Trustees hereby agree and declare that the Trustees do and will henceforth stand possessed of the said property upon the trusts and subject to the powers and provisions following (that is to say):

Trusts for home of rest. 1. The Trustees shall use and permit the said freehold hereditaments (hereinafter called "the Home") to be used and carried on as and for a Home (*b*) of Rest Convalescence Recovery and Recreation for the benefit of the health of the staff and employees for the time being and from time to time of the Company known as X Ltd. or of retired members of such staff or retired employees of the Company and their respective wives or families or otherwise for the benefit of all or any of such persons whose health would or might be thereby benefited and upon such terms and subject to such rules and regulations with such restrictions as the trustees shall from time to time in their absolute and uncontrolled discretion think fit the intention being that the management of the said Home (hereinafter called "the Home") and the admission of persons thereto and the numbers and qualifications of such persons for admission and the duration and conditions of their residence there and all other matters in connection with the successful carrying on of the said Home shall be within the exclusive cognisance of the Trustees who may make rescind or vary at any time and from time to time the regulations and conditions which are to govern the same without being responsible to any person in connection therewith.

Trust of investments. 2. The Trustees shall either retain in their present form the investments specified in the Second Schedule hereto or may at discretion convert the same or any part thereof into money and shall

(*a*) Stamp *ad valorem*, to be adjudicated. This deed must be sent within six months of its execution to the Charity Commissioners in accordance with s. 29 (4) of the Settled Land Act, 1925.

(*b*) A trust for a home of rest has been held to be charitable: *Re James*, [1932] 2 Ch. 25; *Re Chaplin*, [1933] Ch. 115.

invest the money thereby arising and any other money which may by any means be brought within the trusts hereof in any investments for the time being authorised by law for trustees and shall stand possessed of all investments for the time being representing the investments specified in the said Second Schedule hereto (hereinafter called "the Endowment Fund") upon trust to apply the dividends and income thereof in and for the maintenance repair insurance reconstruction and general upkeep of the said Home and the payment of all outgoings in connection therewith and the general expenses of carrying on and managing the same PROVIDED ALWAYS that in any case in which the Trustees' accountants shall in writing certify that any payment in connection with the said Home ought in their opinion to be regarded as capital expenditure the Trustees shall be at liberty to pay and discharge the same out of the corpus of the Endowment Fund.

Powers of Trustees: power to sell and purchase other land;

3. (a) In case of a sale (with the consents as by law required) of the Home or any part of the premises constituting the Home sale moneys may be invested by the Trustees not only in any of the modes of investment permitted by the Settled Land Act 1925 for the investment of capital money but also in the purchase of any other land or premises (whether freehold or leasehold) convenient to be used for any of the purposes aforesaid and in fitting equipping and furnishing the same as a Home for such purposes and such purchased land or premises shall be held and used upon and with the like trusts and powers and for the like purposes as the original Home (including this present power).

power to mortgage.

(b) The purposes for which under section 71 of the Settled Land Act 1925 a tenant for life may raise money by mortgage shall include and extend to any purpose for which the Trustees may from time to time consider it to be desirable to raise money by mortgage and so (in particular) that money so raised shall be applicable (1) to effecting any improvement upon the trust property which the Trustees' surveyor may certify to be desirable (whether or not being a statutory improvement) and (2) in the same manner and for the same purposes in and for which capital of the Endowment Fund may be expended.

Power to vary trusts.

4. The trusts hereof may at any time and from time to time (but with the consent of the said A during his life) be by deed revoked varied or supplemented by the Trustees but so nevertheless that any new or varied trusts thereby imposed shall be charitable trusts only and so that if any of the trusts or powers whether hereby or by any such deed declared is not in law a valid charitable trust or power then the same *ipso facto* shall be deemed to be expunged from and never to have formed part of such trusts and powers to the intent that only such of the same as are charitable in the legal sense shall have effect.

Power to appoint trustees.

5. The statutory powers of appointing new trustees shall apply to these presents.

IN WITNESS *etc.*

THE FIRST SCHEDULE.

[*Freeholds.*]

THE SECOND SCHEDULE.

[*Investments.*]

Form 22.

Pension and Benevolent Funds of a Limited Company. Trust Deed and Rules (*a*).

THIS DEED made the —— day of —— BETWEEN —— LTD. whose registered office is situate at —— (hereinafter referred to as "the Company") of the first part and —— (hereinafter referred to as "the Trustees") of the other part

WHEREAS :—

(A) The Company is desirous and has determined to establish two funds (hereinafter referred to as "the Pension Fund" and "the Benevolent Fund" respectively) for providing retiring pensions and other benefits for such persons as shall become eligible therefor under the provisions of these presents

(B) In consideration of the contributions to be made to the Pension Fund by the Employees of the Company by means of deductions from their salaries as hereinafter provided the Company has agreed to undertake such liabilities in respect of contributions to the funds or otherwise as are hereinafter expressed to be imposed upon them

(C) With the object of establishing the Pension Fund and in particular of providing a proportion of pension in respect of their past service with the Company and/or its predecessors of those members of the Pension Fund who were already in the service of the Company on and prior to the 1st day of July 1940 —— has transferred to the Trustees 30,000 fully paid ordinary shares of the Company

(D) The said —— has transferred to the Trustees 25,000 fully paid ordinary shares of the Company with the object that the same and any additions thereto shall form the Benevolent Fund as hereinafter constituted and subject to the terms and provisions of these presents

(E) The parties hereto of the other part have agreed to act as Trustees hereof

(F) Rules for the regulation management and administration of the Pension Fund are set out in the schedule hereto

NOW THIS DEED WITNESSETH that for effectuating the said desire and determination and in pursuance of the said agreement and for the considerations hereinafter appearing the Company hereby covenants with the Trustees and the Trustees covenant with the Company so far as the agreements and stipulations hereinafter contained are or ought to be performed or observed by the Company and the Trustees respectively but so that no personal liability shall be incurred by the Trustees of any of them except in respect of their trusteeship of the funds hereinafter mentioned in manner following that is to say :—

1. In this Deed and the schedule hereto unless the contrary intention appears :— Definitions.

(i) Words importing the masculine gender include females

(ii) Words in the singular include the plural and words in the plural include the singular

(*a*) This form was drafted by Mr. H. Samuels, of Lincoln's Inn.

(iii) The following words and expressions have the meanings hereby assigned to them :—

The expression "The Trustees" means the persons parties hereto of the other part or other the Trustees or Trustee for the time being of this deed.

The expression "The Rules" means and includes the rules set forth in the schedule hereto and any alterations of and additions to the said rules made as hereinafter provided.

The expression "The Committee" means the Management Committee as for the time being constituted according to the rules.

The expression "Pension Fund" means and includes all moneys from time to time held by or on account of the Trustees in pursuance of this deed for the purpose of the Pension Fund together with the income of the same and the investments for the time being representing the same.

The expression "Benevolent Fund" means and includes all moneys from time to time held by or on account of the Trustees in pursuance of this deed for the purposes of the Benevolent Fund together with the income of the same and the investments for the time being representing the same.

The expression "The Funds" means the Pension Fund and the Benevolent Fund.

"Contributing Member" means any employee of the Company who shall be admitted to membership of the Pension Fund under the provisions hereof and is not a retired member.

"Original Member" means a contributing member who was in the service of the Company on 1st July 1940.

"Retired Member" means a person who has ceased to be a contributing member and is in receipt of a pension under the provisions hereof.

"Member" means a contributing member or a retired member.

"Interest" means compound interest at the rate of three per centum calculated with annual rests at thirtieth June.

The expressions "The Secretary" "The Actuary" and "The Auditor" mean respectively the secretary actuary and auditor hereinafter mentioned appointed under the provisions hereof.

"Salary" means the annual amount of ordinary fixed salary or wages without allowance for deductions on account of short time or any agreed deductions and does not include any payments by way of bonus or in respect of overtime or commission or repayment of expenses or other casual payments.

"Financial Year" means the year ending on the thirtieth day of June in each year.

"Retirement Age" means in the case of a male member the age of sixty-five and in the case of a female member such age as the Trustees may decide at the time of her admission to membership.

"Date of Commencement" means the 1st day of July 1940.

"Company's Committeemen" means the members of the committee appointed by the Company as provided in the rules.

"The Contributing Members' Committeemen" means the members of the committee elected by the contributing members as provided in the rules.

Constitution of the funds

2. The Pension Fund and the Benevolent Fund as hereby constituted shall be deemed to have been established on the First July One thousand nine hundred and forty. On and from that date the provisions of this Deed and the schedule hereto shall take effect and shall be binding upon all the parties hereto and upon all persons who shall become members and upon all persons who shall become entitled to any benefit whatsoever from the funds or either of them.

Deduction of members' contributions

3. As from the date at which each contributing member becomes liable under the rules to make contributions to the Pension Fund the Company shall deduct by equal instalments from the salary of such contributing member as and when such salary shall be paid the amount of his contribution to the fund. The Company shall carry such amount immediately upon its being so deducted to the credit of the Trustees in an account to be kept in the books of the Company as between the Company and the Trustees and shall hold the said amounts to the order of the Trustees.

Contribution of Company in respect of original member.

4. In respect of each original member the Company shall pay to the Trustees twice the amount of the contributions which would have been payable by those members in respect of their membership from the date of commencement to the 1st day of February 1941 calculated in accordance with the rules if the liability of those members to pay contributions had under paragraph 3 (i) of the rules commenced on the date of commencement instead of the 1st day of February 1941.

Company's contributions

5. In addition to the initial investments of 30,000 shares and 25,000 shares respectively aforesaid and all sums carried to the credit and held to the order of the Trustees as aforesaid in respect of the deductions made under clause 3 hereof and in addition to the contributions made or to be made by the Company in respect of the original members from the date of commencement to 1st February 1941 as in the next preceding clause provided

(i) The Company shall at the end of every quarter of a financial year (or at more frequent periods if the Company thinks fit) out of its own moneys carry to the credit of the Trustees in the said account and hold to the order of the Trustees such further sums as shall be equal in amount to one-third of the said sums so deducted from the salaries of the contributing members as aforesaid during such quarter or other period;

(ii) The Company shall pay all premiums due or payable in respect of assurances upon the lives of the contributing members in the amounts to which the contributing members are respectively entitled to have their lives assured under the rules;

(iii) If in any year the Benevolent Fund has not produced sufficient income to pay for the premiums in respect of such life assurances as are payable out of the Benevolent Fund the deficiency shall be made good by the Company but so that any sum paid by

the Company under this guarantee shall be by way of loan only and shall be refunded to the Company as hereinafter provided

PROVIDED ALWAYS that such contributions by the Company shall be regarded as voluntary only and the Company may at any time by giving six months' notice to the Trustees expiring at the end of the financial year suspend or terminate in whole or in part all or any of its liabilities under these presents and at the end of the said period of six months the Company's liabilities shall be suspended or terminated to the extent specified in such notice.

Special donations.

6. The Trustees shall have power to hold any special donations which may be given to either of the funds by the Company or other persons including bequests and to apply such donations to such special purpose within the purposes of such fund as may be directed by the donor or subject thereto for the general purposes of that fund. The Trustees shall be at liberty to act on the advice of the actuary as to the amount of any pensions or any increases in pension or any reductions of contributions which such donation will suffice to effect.

Application of benevolent fund.

7. The Benevolent Fund shall be applied at the discretion of the Trustees for the following purposes or any of them:

(a) In making grants either by way of lump sums or periodical payments or otherwise to any person who is or was at any time in the service of the Company or its predecessors;

(b) In making grants to the Pension Fund;

(c) In financing any scheme of benefit to such persons as aforesaid or any of them which the Trustees may with the approval of the Company decide to initiate

PROVIDED THAT:—

(i) Out of the Benevolent Fund the Trustees shall firstly and in absolute priority to all other payments or claims pay all premiums due or payable in respect of any person in the service of the Company (not being a member of the Pension Fund) upon whose life the Trustees shall in their absolute discretion have effected an assurance, but no such assurance shall be effected by the Trustees except on the recommendation of the Company and only in such amount or amounts as the Company shall request.

(ii) Out of the Benevolent Fund the Trustees shall after providing for the payment of all premiums payable during the financial year and any other fixed commitments of the Trustees which shall be payable out of the Benevolent Fund repay to the Company any amount or amounts which shall have been paid by the Company in pursuance of sub-clause (iii) of clause 5 hereof (relating to the Company's guarantee of life assurance premiums) but the Trustees shall only make such repayment in a year in which the income of the Benevolent Fund exceeds the amount required for the payment of all assurance premiums payable out of the Benevolent Fund during that year and any other fixed commitments of the Trustees and only to the extent of such excess.

(iii) If in any financial year the Pension Fund has not as a whole produced a net income equal to the rate of four per cent. on the mean amount of the fund (that is to say the mean between its amount at the beginning of that year and its amount at the end of that year including cash in hand or on deposit in each case) the Trustees shall

on the recommendation of the actuary make good the deficiency either out of the income or the capital of the Benevolent Fund.

(iv) The Trustees may apply the income of the Benevolent Fund or any part thereof

(a) To supplementing the income or increasing the rate of interest of any thrift provident or savings fund which may be established for the benefit of females in the service of the Company, or

(b) To initiating or subsidising any scheme or matter which in the opinion of the Trustees will be for the benefit of any persons who are or were at any time in the service of the Company and/or its predecessors.

(v) Out of the Benevolent Fund the Trustees may in such cases as they deem proper make advances to persons for the time being employed by the Company provided that the total amount of any such advance shall be secured either by a policy or policies of assurance effected by such person upon his own life and assigned in favour of the Trustees for the purpose of securing such advance or by a charge being effected in favour of the Trustees by such person on his benefits from the funds and otherwise on such terms and conditions as to times of repayment interest and the like as they the Trustees may deem equitable.

The Trustees may with the consent of the Company and of the actuary lay down rules for the Benevolent Fund and may with the like consent divide the Benevolent Fund into separate funds under the control of the Trustees for any of the purposes hereinbefore authorised for the Benevolent Fund and upon the formation of any such separate fund the Trustees may appoint a management committee to administer the same and may lay down rules for such separate fund and do all other things that they may deem requisite for the separate administration of such fund and the provisions hereof as to the Benevolent Fund shall *mutatis mutandis* also apply to such separate fund.

The provisions hereinbefore contained as to the application of moneys out of income only for certain purposes shall be construed only as limiting the amounts to be so expended and not as restricting the power of the Trustees to apply both the capital and income of the Benevolent Fund for any of the other purposes of the Benevolent Fund hereby authorised.

Investments

8. So much of the moneys so paid to the Trustees as aforesaid as shall not be applied directly under the provisions of this Deed in the payment of any charges payable by the Trustees or of pensions or other benefits to contributing members or otherwise shall as soon as practicable be invested in the names of the Trustees or of such of them (not being less than three in number) as the Trustees may from time to time appoint in any of the ways following (that is to say) :—

(i) The stocks funds securities bonds of or guaranteed by the Government of Great Britain or India or any British Dominion Colony Mandated Territory Dependency (including Egypt and any separate territory or province or settlement forming part of any British Dominion Colony Mandated Territory Dependency or situate

within His Britannic Majesty's Dominions) or any foreign country or State.

(ii) The stocks funds debentures securities or bonds of any public municipal or local body or authority in Great Britain or India or any British Dominion Colony Mandated Territory or Dependency (including as aforesaid) or of any gas water dock or canal undertaking in Great Britain.

(iii) The mortgages debentures securities or bonds or the guaranteed or preference or preferred stocks (including preferred ordinary) or ordinary stocks or shares of the Company or of any other company or undertaking whatsoever incorporated or situate or carrying on business in Great Britain or India or any British Dominion Colony Mandated Territory Dependency (including as aforesaid) which shall during each of the five years next before the date of investment have paid dividends or interest at the rate of not less than four per cent. per annum upon stocks or securities of the nominal value of at least five hundred thousand pounds (or the equivalent thereof in other currency) ranking for dividends or interest behind the investment taken.

(iv) All investments for the time being authorised by law for trust funds.

(v) In or upon the mortgages of leaseholds having at least forty years to run at the time of investment.

(vi) In the purchase of freehold ground rents or chief rents in the United Kingdom.

(vii) In the purchase of freehold or leasehold land in the United Kingdom and the erection and alteration of buildings thereon.

(viii) Upon the security of any reversionary interest under will or settlement in real or personal property within the United Kingdom or upon the security of any life interest in such real or personal property together with a policy or policies of insurance on the life or lives of the person or persons for whose life or lives such interest is holden.

With power for the Trustees from time to time to change any such investments for others of a nature hereinbefore authorised.

PROVIDED THAT

(i) Notwithstanding the provisions of this clause the Trustees may retain any property specifically given or bequeathed to them or otherwise for the benefit of the Pension Fund or Benevolent Fund as the case may be in the state in which it may be at the time of such gift or bequest and they may invest any money so specifically given or bequeathed in any manner prescribed or authorised by the donor or testator.

(ii) The Trustees may retain on deposit or on current account with a bank or banks to be selected by them such amount as they may from time to time consider proper for meeting any current expenses or any claims which may appear likely to mature in the near future.

AND PROVIDED ALWAYS that the Trustees with the approval of the Company may at any time by deed appoint any company or corporation to be the custodian trustee of the funds or remove or consent to the retirement of any such custodian trustee from the trust. And the provisions of section 4 of the Public Trustee Act 1906 shall apply

to any such custodian trustee (whether or not entitled by rules made under that Act to act as custodian trustee) and any such custodian trustee shall receive for its services such remuneration (if any) (not exceeding the fees chargeable by the public trustee as custodian trustee) as the Trustees with the approval of the Company may from time to time think proper.

In respect of any freehold or leasehold properties held by them for the purposes of the fund the Trustees shall have full and unrestricted powers of leasing selling mortgaging or otherwise dealing with the same as if they were the absolute owners thereof and upon any such sale mortgage or other dealing the purchaser mortgagor or other person dealing with the Trustees shall not be concerned or bound to see or inquire whether such consent has been obtained or as to whether the sale mortgage or other dealing is made for the purposes of the trusts hereof or as to whether any money raised by such mortgage or charge is wanted or that no more than is wanted is raised or as to the necessity or expediency or otherwise as to the regularity of the sale mortgage or other dealing or be affected by express notice of any irregularity whatsoever in any such dealing and notwithstanding any such irregularity such sale mortgage or other dealing shall so far as regards the safety and protection of the purchaser mortgagee or other person dealing with the Trustees be deemed to be within the power of the Trustees and be valid and effectual accordingly and the receipt of the Trustees in respect of any moneys arising from such sale mortgage or other dealing shall be a complete discharge and in particular any such lease sale or dealing may be effected between the Trustees and the Company.

Accounts.

9. The Trustees shall keep a complete record of the persons becoming entitled to a pension or any other allowance and of all deaths withdrawals and other matters essential for the working of the funds and shall also keep separate accounts of the Pension Fund and Benevolent Fund to show the position of and all dealings with either of the funds and the investments thereof and the amounts contributed to the Pension Fund by each member and by the Company. Both the said accounts shall be made up to 30th June in each year and the Trustees shall cause balance sheets of both funds to be prepared and audited annually by the auditor who shall be a chartered or incorporated accountant appointed by the Trustees with the approval of the Company. The auditor shall have access to all books papers accounts vouchers and documents connected with either of the funds and shall state in writing the result of the audits and furnish reports thereon. The said balance sheets and reports shall be kept at the registered office of the Company.

Actuary and valuation.

10. The Trustees shall from time to time with the approval of the Company appoint and may from time to time with such approval remove an actuary to the funds who shall be a Fellow of the Institute of Actuaries in London or of the Faculty of Actuaries in Scotland. The actuary shall whenever the Trustees so desire but at least once in every five years make a complete valuation of the funds and report in writing to the Trustees on the financial position thereof the first of such valuations and reports to be made as on thirtieth June One

thousand nine hundred and thirty-nine and all necessary accounts and information shall from time to time be supplied to the actuary by the Trustees and the Company. If such report shows a definite or anticipated deficiency in the Pension Fund the Trustees shall determine subject to clause 17 hereof having regard to the recommendations (if any) of the actuary what action if any shall be taken either by increasing the contributions or decreasing the pensions and/or other benefits or otherwise to restore the solvency of the Pension Fund. If such a report shows a surplus beyond the requirements of the Pension Fund such surplus or any part thereof may at the option of the Trustees and on the written advice of the actuary either (a) be set aside as a reserve fund or (b) be employed in either reducing the contributions or increasing the benefits of the Pension Fund.

The committee shall from time to time appoint and may from time to time remove a secretary of the funds or either of them and also may in like manner appoint and remove such other officers as the committee shall consider desirable.

Payment of expenses.

11. The expenses of management of either of the funds including the initial cost of establishing that fund and any salaries and fees payable in connection therewith and any expenses in relation to any investments or variations of investments shall be paid out of that fund.

Reconstruction.

12. In the event of the Company being wound up for the purposes of reconstruction reconstitution or amalgamation with any other company the Trustees may make such arrangements or enter into such agreements as they in their discretion think fit for the continuance of the funds or either of them in connection with such reconstructed reconstituted or amalgamated company as if such reconstructed reconstituted or amalgamated company were in fact the Company or a continuance thereof.

Duration of funds.

13. The trusts hereby created shall unless previously determined under the provisions of the clause next following endure during the life of the survivor of the issue now living of His Late Majesty King George the Fifth and twenty-one years after the death of such survivor and such further period if any as may be lawful.

Dissolution of pension fund.

14. If the Company from any cause whatever ceases to carry on business or goes into liquidation whether voluntary or compulsory otherwise than for the purposes of reconstruction reconstitution or amalgamation or if a resolution signifying the desire of the contributing members that the Pension Fund shall be dissolved shall be passed by a majority of not less than three-quarters of such contributing members who shall be present in person at a general meeting duly convened under the rules of which notice specifying the intention to propose the resolution has been duly given and such resolution shall be confirmed by a majority of such contributing members who shall be present in person at a subsequent general meeting duly convened and of which notice has been duly given and held after an interval of not less than fourteen days nor more than one calendar month from the date of the first meeting and the Company shall have consented to such meeting then the whole Pension Fund shall be

realised and (i) the net proceeds thereof after payment thereout of all costs and expenses of and incidental to the realisation and distribution thereof shall be applied first in the provision of pensions or the purchase of annuities for the retired members and secondly subject thereto in the provision of pensions or the purchase of annuities for all or any of the contributing members regard being had to their actual or prospective rights and interests in the fund and (ii) any policy effected by the Trustees under these presents upon the life of a member shall be the absolute property of such member and the member shall be entitled to take out with the assurance company by whom such policy has been issued a fully paid policy in lieu thereof for an amount proportionate to the period during which the policy shall have been in existence according to the ordinary tables of such assurance company or to surrender such policy in return for the surrender value thereof for the time being or to continue to pay in full until the date of his reaching the retirement age the premium on the policy at the same rates as hitherto paid by the Company.

Dissolution of benevolent fund.

15. If the Company shall go into liquidation whether voluntary or compulsory other than for the purpose of reconstruction or amalgamation the trusts relative to the Benevolent Fund shall determine. Upon such determination the affairs of the Benevolent Fund shall be wound up and (a) any policy effected by the Trustees the premiums upon which were payable out of the Benevolent Fund shall be the absolute property of the person for whose benefit such policy has been effected and that person shall be entitled to take out with the assurance company by whom such policy has been issued a fully paid policy in lieu thereof for an amount proportionate to the period during which the policy shall have been in existence according to the ordinary tables of such assurance company or to surrender such policy in return for the surrender value thereof for the time being or to continue to pay in full until the date of his reaching the retirement age or other date provided by the policy for the cessation of premiums the premium on the policy at the same rates as hitherto paid by the Trustees and (b) the remaining assets of the Benevolent Fund of whatsoever kind shall be converted into money and subject to the payment of all charges and expenses which may then be owing the proceeds of such conversion shall be applied in increasing the assets of the Pension Fund for the purpose of their application in the manner set out in the last preceding clause hereof and/or for the benefit of the employees generally of the Company and Trustees may apply the said proceeds to the said purposes in such proportions as they may in their absolute and uncontrolled discretion determine.

Appointment of Trustees.

16. (i) The Trustees shall be four in number of whom three (hereinafter referred to as "the Company's Trustees") shall be appointed by the Company in pursuance of a resolution of its directors and one (hereinafter referred to as "the Members' Trustee") shall be elected by the contributing members as hereinafter provided.

(ii) The Company may by a resolution of its directors remove from office any of the Company's Trustees and the Company shall have power by similar resolution to appoint new trustees or a new trustee for the purposes of these presents in the place of any of the

Company's Trustees who shall die be removed from office retire become incapable of acting become bankrupt or make any assignment for the benefit of or any composition or arrangement with his creditors.

(iii) No person shall be eligible as a Members' Trustee or be qualified to continue as a Members' Trustee after from any cause whatsoever ceasing to be employed by the Company or ceasing to be a contributing member. No person (other than the Members' Trustee hereby appointed) shall be appointed a Members' Trustee unless :—

(a) He has been in the employ of the Company or its predecessors for the last five years.

(b) He has been nominated in writing by at least ten of the contributing members.

(c) Such nomination has been deposited with the Trustees at least seven clear days before the date fixed by the Trustees of which date the Trustees shall give not less than fourteen clear days' notice either by notices posted in the premises of the Company or sent to the members entitled to vote.

(iv) A general meeting of the members specially called for the purpose shall have power by resolution to appoint a new trustee for the purpose of these presents in the place of any Members' Trustee who shall die become disqualified or incapable of acting become bankrupt or make any assignment for the benefit of or any composition or arrangement with his creditors or is requested to resign office by resolution passed at a meeting of the Trustees by a majority of such Trustees present and voting or by a resolution passed by a majority in number of the members present at a general meeting of the members held for that purpose.

(v) Vacancies occurring in the number of the Trustees shall be filled forthwith but unavoidable delay shall not invalidate any intermediate acts or proceedings of the remaining Trustees.

(vi) Subject to the provisions of the foregoing paragraphs of this clause the office of trustee shall be permanent.

(vii) The original Company's Trustees are the said —— —— and ——

The original Members' Trustee is the said ——

Meetings of Trustees.

17. The Trustees shall meet together at such times and places as they may from time to time determine and the method of convening such meetings and the procedure thereof shall be such as the Trustees or a majority of them may from time to time determine.

Alteration of provisions.

18. (i) The power to alter modify or add to all or any of the provisions of these presents or of the rules shall subject as hereinafter provided be vested in the Trustees.

(ii) No such alteration modification or addition shall be made affecting the rights or interests of any member or of any person claiming under a member unless passed by a three-fourths majority of the persons present at a joint meeting of the Trustees and committee convened for the purpose of considering the same and unless the Company shall give its consent thereto.

(iii) Except in order to give effect to the actuary's report in pursuance of the provisions of clause 10 hereof no such alteration modification or addition shall operate so as to affect in any way

prejudicially the rights or interests of any person already a contributing member or of any retired member or of any other person then entitled to any benefit from either of the funds presently payable at the date of such alteration modification or addition.

(iv) No alteration modification or addition shall be made affecting the financial position of either of the funds save as advised by the actuary.

(v) No alteration modification or addition shall be made which would have the effect of alterating the main purpose of the Pension Fund or of substituting any other form of benefit for the provision of pensions or which would provide for the return to the Company of any contribution or part thereof made by the Company.

(vi) In the event of any extension or modification of the Government Scheme of Contributory Pensions involving further compulsory contributions from employers and/or employees the Trustees and the committee may and on the application of the Company and in pursuance of a resolution passed by a majority of the contributing members present at a general meeting convened for the purpose shall amend these presents with the advice of the actuary with a view to reducing the payments to the Pension Fund by the contributing members and/or the Company and also to reducing the benefits of the Pension Fund in proportion.

Liability of company.

19. The liability of the Company under this deed save as herein expressly provided is that of contributor only and only to the extent herein appearing and the Company shall not be liable for any loss incurred in the management of the funds.

In witness whereof the Company has caused its common seal to be hereunto affixed and the Trustees have hereunto set their hands and seals the day and year first above referred to.

SCHEDULE

Rules of the Pension Fund.

Membership

1. (i) Every male person who is employed on the permanent salaried staff of the Company shall be eligible to become a contributing member.

(ii) A female person who is employed on the permanent salaried staff of the Company shall upon being nominated by the Company for admission to membership be eligible to become a contributing member subject to such special conditions and/or modifications of the rules as the Trustees with the approval of the Company may decide in her case.

Provided that—

(a) Each member shall as soon as required by the Trustees sign the form of declaration set out at the end of the rules.

(b) Any persons otherwise eligible under this rule to become contributing members may on any ground which appears to the Company sufficient be excluded from membership and the decision of the Company in any such case shall be binding and conclusive on all persons whatsoever. Subject thereto each contributing member shall so long as he remains in the service of the Company continue to be a contributing member.

(c) Any question arising as to the eligibility of any of the persons or classes of persons hereinbefore in this rule described to become a member or members shall be determined in each case by the Company whose decision in any such case shall be binding and conclusive on all persons whatsoever.

(d) In pursuance of the provisions of the trust deed the admission of new members may at any time be suspended or wholly terminated.

Pensions.

2. (i) For the purposes of the Pension Fund the contributing members shall be divided into salary grades in the manner set out in the first and second columns of Table A annexed hereto.

In the event of a contributing member receiving an increase or suffering a diminution of salary he shall be transferred to the appropriate salary grade as from the first day of July immediately following the date when such increase or diminution takes effect.

(ii) The annual amount of pension to which a contributing member shall on reaching the retirement age and retiring from the service of the Company and subject as hereinafter provided be entitled shall be calculated as follows:—

For each year of his membership the member shall be entitled to receive the amount shown in the third column of Table A annexed hereto as applicable to the salary grade of the member during that year (an apportionment of such amount being made in respect of any period of less than a complete year).

In addition to the amount of pension calculated as hereinbefore provided an original member shall be entitled for each year of his service with the Company and its predecessors before the date of commencement to receive the amount shown in the third column of Table A annexed hereto as applicable to the salary grade of such original member at the date of commencement (an apportionment of such amount being made in respect of any period of less than a complete year).

(iii) A contributing member who after reaching the retirement age remains in the service of the Company in any capacity whatsoever shall subject as hereinafter provided become entitled to a pension on the scale hereinbefore set forth on his actually ceasing to be in the service of the Company and not before.

(iv) If a retired member shall die within a period of three years from the date of his retirement his personal representatives shall be entitled for the remainder of such period of three years to receive from the Trustees the said annual amount of pension or if the committee so recommend such lump sum as shall be certified by the actuary to be the equivalent thereof.

Contributions.

3. (i) Each original member shall as from February 1 1941 and each other contributing member shall as from the date of admission to membership make contributions in accordance with the scale set out in Table B annexed hereto.

(ii) If a contributing member is transferred from a lower to a higher salary grade or *vice versa* as hereinbefore provided the rate of his contribution shall be thereupon increased or diminished as the case may be by the product of the rate which would under the said Table B be applicable to the member if he were at the date of such transfer in salary grade A multiplied by the difference between the numbers shown in the third column of Table A aforesaid as the appropriate multiples of £1 pension for each year of service for the said lower and higher salary grades respectively.

Death of member.

4. A life assurance shall be effected on the life of each contributing member and each member shall on admission to membership elect whether he wishes such assurance to continue till his death irrespective of age or till his attaining the retirement age and the sum to be assured shall be determined in accordance with such election in the manner set out in Table C annexed hereto. In the event of the death of a member while in the service of the Company and before his reaching the retirement age there shall be paid to his personal representatives (a) the sum so assured and (b) the total amount of the contributions paid by such member plus interest thereon and

(c) half of the amount of the contributions (if any) paid by the Company in respect of such member as for the period from the date of commencement till February 1 1941.

In the event of the death of a retired member who has elected that such assurance shall continue till his death irrespective of age the sum so assured shall on his death be paid to his personal representatives.

PROVIDED THAT—

(1) Any policy so effected on the life of a member shall be the absolute property of the Trustees subject only to the rights or interests therein expressly conferred on the member by the foregoing provisions of this rule and of the next succeeding rule in the events therein respectively specified.

(2) In any case in which the Trustees in their sole and unfettered discretion deem proper the Trustees may in lieu of the payment of the whole or any part of any sum payable to the personal representatives of a member under the foregoing provisions of this rule retain such whole or part and pay or apply the same by way of pension or otherwise in such instalments as they deem fit to or for the benefit of any dependant or dependants of such member.

Reduced pension in certain cases.

5. If a contributing member suffers a permanent breakdown in health or shall at any time after reaching the age of sixty signify in writing to the secretary his desire to retire from the service of the Company such contributing member shall subject to the consent of the Company be entitled to receive in substitution for any other benefit from the fund to which he may be entitled a pension which in the event of such member having reached the age of sixty shall be calculated in accordance with Table D annexed hereto and in any other case shall be of such amount as the actuary shall certify to be produced by the aggregate of the contributions paid by or in respect of such contributing member plus interest thereon PROVIDED THAT the Trustees may in exceptional cases where a contributing member leaves the service of the Company on account of permanent breakdown in health before reaching the retirement age cause to be paid to such member having regard to his state of health or other exceptional circumstances or where the pension of such member would be of a trifling amount in lieu or commutation of such pension a lump sum not exceeding the amount certified by the actuary to be the equivalent thereof but this power shall be exercisable only if the Trustees are so requested by the committee.

A member retiring from the service of the Company and being granted pension (or lump sum benefit) under the provisions of this rule shall have any policy which has been effected on his life under rule 4 hereof delivered to him and he shall have in respect thereof the following options that is to say: (a) to continue to pay out of his own moneys the premiums on the policy in accordance with the terms thereof or (b) to accept a paid-up policy in lieu thereof or (c) to accept the surrender value thereof.

Members leaving service of the company.

6. (i) If before reaching the retirement age a contributing member leaves the service of the Company in consequence of misconduct (as to which the board of directors of the Company shall be the sole judges) or without having completed one year in the service of the Company he shall be entitled to be repaid the total amount of his own contributions (without interest thereon).

(ii) Save as in the preceding paragraph of this rule and in rule 5 expressly provided a contributing member leaving the service of the Company before reaching the retirement age shall be entitled to receive the total amount of his own contributions plus interest thereon and the Trustees shall have entire discretion as to the application of any policy effected on his life under rule 4 hereof and may apply the proceeds thereof for the benefit of such member and/or for any general or special purpose of the

Benevolent Fund or of the Pension Fund as the Trustees may in their entire and absolute discretion deem fit.

Management committee.

7. (i) The fund shall be administered by a Management Committee which shall consist of six persons three of whom shall be appointed by the board of directors of the Company convened for the purpose and three of whom shall be contributing members elected by the contributing members. One of the Company's committeemen and one of the contributing members' committeemen shall retire annually in rotation but shall be eligible for re-appointment or re-election as the case may be. The question which of the members of the committee shall so retire shall be decided by ballot at a meeting of the committee. The chairman of the committee shall be appointed by the committee from the Company's committeemen. The first committee shall be appointed as soon as may be after the date of commencement and the elections of contributing members' committeemen shall be so far as practicable in the manner provided in the next succeeding sub-clause of this rule save that the Trustees may after the candidates have been nominated as therein provided take the votes of the contributing members thereon either at a general meeting convened for the purpose or in such other manner as the Trustees may deem proper.

(ii) The vacancies occasioned annually by retirement by rotation shall be filled as follows:—

(a) The Company's committeemen shall be appointed in such manner as the Company shall determine and such appointment shall be made at least thirty days before the annual general meeting.

(b) Contributing members' committeemen shall be elected at the annual general meeting by ballot and the names of the candidates for such ballot shall be sent in writing to the secretary with the candidates' assent to act at least fourteen days before the annual general meeting.

(iii) Casual vacancies on the committee caused by death retirement resignation or otherwise shall be forthwith filled by appointment by the committee. A committeeman so appointed shall hold office only until the next annual general meeting. The vacancy of that of the Company's committeeman shall then be filled by the board of directors of the Company: if that of a contributing members' committeeman by the contributing members in manner hereinbefore provided.

(iv) The committee shall meet at least once in every three months at such day hour and place as the committee may from time to time determine.

(v) At the first meeting of the committee following the annual general meeting the committee shall appoint a chairman for the ensuing year from the Company's committeemen. The chairman so appointed shall hold office until the next annual general meeting.

(vi) Four members of the committee shall form a quorum and every question arising shall be decided by a majority of votes.

(vii) Each member of the committee present including the presiding chairman shall have one vote.

(viii) In the event of an equality of votes the presiding chairman shall have a second or casting vote.

(ix) Subject to the rules the committee shall determine its own procedure.

Joint meetings.

8. At any joint meeting of the Trustees and the committee convened for any of the purposes of the Pension Fund each person present including the chairman shall have one vote. The chairman of the committee shall preside or in his absence such other person as the persons present at such meeting shall appoint. In all other respects the provisions of clause 7 of these rules as to the procedure of the committee shall apply to any such joint meeting.

Annual general meetings.

9. As soon as may be after the accounts have been audited in each year an annual general meeting of members shall be convened for the purpose of

receiving the annual report accounts and balance sheet of the Pension Fund. The committee may at any other time convene a general meeting of the members and shall convene such meeting if requested in writing to that effect by not less than one-tenth of the contributing members for the time being which request shall state the object for which such meeting is desired. Notice of each general meeting stating the object thereof shall be posted up at least fourteen clear days before such meeting is held at such places in the premises of the Company as from time to time may be fixed by the committee. Whoever is for the time being present shall form a quorum. The chairman shall be the chairman for the time being of the committee. Each member shall be entitled to one vote. In the case of an equality of votes the chairman shall have a casting vote. Voting by proxy shall be permissible in the case of such members as are employed elsewhere than at the place at which the meeting is held or are unable to attend personally on account of illness but not otherwise without the consent of the committee given at or before the meeting at which such voting takes place. The instrument appointing a proxy shall be in form approved by the committee and be deposited with the secretary not later than noon on the day prior to the meeting at which it is to be used. No person who is not a contributing member shall be appointed a proxy.

Consent of Company.

10. Save as otherwise expressly provided the consent of the Company for any of the purposes hereof shall be given in such manner as shall be authorised by resolution of the directors of such Company and the giving or withholding of such consent shall in every case be within the absolute discretion of the Company.

Arrears of contribution

11. If a contributing member who is not entitled during absence from work to the payment of salary shall be so absent the amount or amounts which would have been deducted from his salary in respect of such period if his salary had been payable shall be a debt due from him to the Pension Fund and payable within such period as the committee may prescribe.

Tax on repai contribution

12. Inasmuch as under the rules made by the Commissioners of Inland Revenue pursuant to their powers under section 32 (4) of the Finance Act 1921 the Trustees are liable to account for income tax to the said Commissioners at one-fourth of the standard rate in force at the time of the refund upon all contributions with any interest additions thereto returned to members during the lifetime of the members the Trustees shall if so recommended by the committee make deductions from contributions returned to any member of an amount equal to the tax payable. In making or withholding such recommendation the committee shall have regard to any evidence produced by such member that by reason of the level of his income he is not chargeable to income tax.

Re-entry int service.

13. If a contributing member having left the service of the company re-enters the service of the Company the committee may with the consent of the Company allow him to be re-instated as a contributing member on such terms and conditions whether as to payment of arrears or mode of calculating length of service or in any other respect as the committee may with the approval of the Company determine.

Times of payment.

14. Pensions shall be payable weekly or otherwise at the discretion of the committee the last payment being apportioned as may be necessary up to the date of death.

Benefits nor assignable.

15. All benefits are strictly personal and a member shall not assign or charge his interest in the Pension Fund or in any benefit assured under the provisions hereof except in favour of the Trustees as security for an advance made by the Trustees in pursuance of the provisions of sub-clause (v) of clause 7 of the trust deed. The committee may refuse to recognise any claim by any party not a member or the legal representative of a member to be paid any sum of money whatsoever out of the Pension Fund or under

the provisions hereof. If a member becomes bankrupt his benefits shall become payable to the committee and shall be applied by them for the use or support of such member upon retirement his wife and children or other dependants or any one or more of such persons at the discretion of the committee.

Evidence of death.

16. Before any payment is made to the estate of a deceased member his personal representatives shall produce satisfactory evidence of his death and their title to receive such benefit as may be due. In such cases where a sum of less than £10 becomes payable in terms of the rules to the personal representatives of a member the committee may in their discretion without requiring production of a grant of representation make the payment to such person or persons as the committee may think fit.

Information to be supplied.

17. (i) The death retirement or dismissal of a member shall be notified to the committee and the Trustees by the Company.

(ii) Every member shall if and when required produce a certificate of birth or other satisfactory evidence of age.

(iii) Every member and every person in receipt of any benefit from the Pension Fund shall notify the secretary of his postal address and of any change therein and shall supply such information within his power as may be required by the Trustees or committee for the purposes of administering the fund.

Members under disability.

18. If a member who is entitled to receive any payment from the Pension Fund is unable by reason of physical mental or other disability to manage his own affairs or to sign documents the committee may in their discretion make the payment to such person or persons as they may think fit to be applied for the benefit of the member and/or his dependants.

Limitation of claims.

19. (i) Save as hereinbefore expressly provided:

(a) All pensions and other benefits shall be paid out of the Pension Fund.

(b) No contributing member or other person entitled to a pension shall have any claim to the payment of such pension except out of the Pension Fund. In no case shall any member or other person entitled to any pension or other benefit have a claim to any payment whatsoever as against the Trustees or committee or any one or other of them in their individual capacity or as against the Company.

(ii) Save as herein prescribed no member nor any other person shall have any claim upon the Pension Fund.

Saving of Company's rights.

20. Nothing in the trust deed or in the schedule hereto shall restrict the right of the Company to determine the employment of any contributing member.

Loss of benefits not to be ground of claim.

21. The right of any member to any benefit from the Pension Fund shall not in the event of the dismissal of such member from the service of the Company be a ground for any damages or any increase of damages in any action brought against the Company in respect of such dismissal.

Disputes.

22. Save as otherwise provided by the trust deed and these rules any disputes and questions relating to the Pension Fund shall be decided by the committee and their decision shall be final and binding on all parties.

Headings of clauses.

23. The headings of the clauses of the trust deed and the rules are inserted for convenience of reference only and shall not form part of or affect the construction thereof.

Construction.

24. These rules shall be read and construed as one with the provisions of the trust deed to which they are a schedule.

Form of Declaration.

To the Trustees of the —— Pension Fund.

I the undersigned —— having been admitted as a contributing member of the above fund declare and agree that I will allow the contributions

specified in the rules of the said fund to be deducted from my salary for so long as I shall be in the service of the said —— Limited and that I will at all times and in all respects observe and fulfil and be bound by the provisions of the trust deed and rules of the fund from time to time subsisting and in force. This form may be used as my authorisation of the said deductions.

I elect that the assurance to be effected on my life under clause 4 of the rules shall be in accordance with Scheme I/Scheme II (*strike out words inapplicable*) shown in Table C annexed thereto.

Signature

Date

Date of Birth

Date of Entry into Service

TABLE A.

Salary Grade	£		£	Pension per annum at age 65 for each year of service. £
A -	52 and under		104 -	1
B -	104	„ „	156 -	2
C -	156	„ „	208 -	3
D -	208	„ „	260 -	4
E -	260	„ „	312 -	5
F -	312	„ „	364 -	6
G -	364	„ „	416 -	7
H -	416	„ „	468 -	8
J -	468	„ „	520 -	9
K -	520	„ „	572 -	10
L -	572 and over		-	15

TABLE B.

SALARY GRADE A.

Age next birthday at entry.	Weekly Contribution. s. d.
16 - - - - -	
17 *etc.* - - - -	

For each of the other Salary Grades (*B to L*). The amount shown in the second column of this Table is to be multiplied by the number shown in the third column of Table A as the appropriate multiple (of £1 pension) for that salary grade.

TABLE C.

SCHEME I.

A member may elect that the assurance shall continue till his death at any age, and the amounts of assurance shall be on the following scale:—

Salary Grade at Date of Admission to Membership.	Amount of Assurance. £
A or B - - - -	
C or D - - - -	
E or F - - - -	
G or H - - - -	
J or K - - - -	
L - - - -	

SCHEME II.

A member may elect that the assurance shall continue till his attaining the retirement age and in that case the policy shall be effected on his life for such amount of assurance (being larger than the amount under Scheme I) as can be secured by annual premiums at the same rate as would have been applicable had the member elected to be assured under Scheme I.

The member may on giving the notice prescribed in the policy and subject to his complying with the conditions of the policy as to payment of premiums and otherwise continue the policy beyond the retirement age either for the same or a lesser amount of assurance.

TABLE D.

Pensions at ages between 60 and 65 shall be computed as follows:—

Age.	The pension already earned vesting at age 65 shall be reduced by the following proportion thereof.
60	-
61	-
62	-
63	-
64	-

Form 23.

I.

Agreement for Sale of Leasehold Unlicensed Hotel or Boarding-house, the Purchase Money to be Payable by Instalments to be Secured by Mortgage (*a*).

Parties. AN AGREEMENT made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called the Vendor) of the one part and B of *etc.* (hereinafter called the Purchaser) of the other part.

Agreement for sale. 1. The Vendor shall sell and the Purchaser shall purchase ALL THAT leasehold messuage or tenement at —— in the County of ——

(*a*) Forms 23, I, II and III were drafted by Mr. E. H. Bodkin, of Lincoln's Inn. In Vol. 7, No. 4 of the Conveyancer will be found a form of agreement for a similar sale, providing for the purchaser being let into possession but the assignment being deferred until payment of all the instalments of the purchase money. That form of agreement has the advantage of saving stamp duty on a mortgage to secure the balance of the purchase money, and is, when carefully drafted, quite safe from the vendor's point of view, since if the purchaser's payments are *bona fide* instalments of purchase money, he cannot claim to be a tenant at a rent and entitled to the protection of the Rent Restrictions Acts. (See *Turner* v. *Watts*, 44 T. L. R. 557; *Dunthorne* v. *Wiggins*, [1943] 2 A. E. R. 678. The decision in *Francis Jackson Developments, Ltd.* v. *Stemp*, [1943] 2 A. E. R. 601, depended on the special wording of the agreement.) Moreover, the vendor can regain possession of the land on the purchaser's default without obtaining leave under the Courts (Emergency Powers) Act, 1943, which he cannot do as mortgagee. The agreement can be registered as a land charge by the purchaser to protect his rights. On the other hand, the position as between vendor and purchaser when completion is delayed is somewhat obscure; the vendor, although he is a constructive trustee for the purchaser is not entitled to all the indemnities to which a trustee in the full sense is entitled (see *Re Watford Corporation and Ware's Contract*, [1943] 1 Ch. 82). The present form, therefore, has its advantages, and, it is believed, is that more usually adopted. Provision must be made for apportioning War Damage Contributions as at the date of completion, but there is no object in requiring the purchaser to insure the furniture under the Private Chattels Scheme, unless the vendor takes a bill of sale on the chattels, but if the tenant's fixtures are of value a covenant to insure them may be added. In order to apportion the purchase money for the purpose of stamp duty the chattels should be valued separately.

and known as —— with the appurtenances as the same is held for the residue of a term of —— years from the —— day of —— granted by a Lease dated *etc.* at the yearly rent of £—— and subject to the lessee's covenants and conditions in the said Lease contained Together with the goodwill of the business of a private hotel or boarding-house now carried on by the Vendor thereon at the price of £—— payable as hereinafter mentioned And also the tenant's fixtures in or upon the said premises and the furniture and other chattels transferable by delivery owned by the Vendor which are in or upon such premises and in use in connection with the said business at the date hereof and the benefit of all pending contracts and agreements relating to the said business and all book debts owing to the Vendor in respect of such business on the —— day of —— (hereinafter referred to as the date of completion) for a sum to be determined by valuation in manner hereinafter mentioned.

Valuation of chattels, etc

2. (1) The premises to be valued under clause 1 hereof shall be valued according to their respective values on the date of completion due allowance being made for all bad and doubtful debts

(2) The valuation shall be made by —— of *etc.* on behalf of the Vendor and by —— of *etc.* on behalf of the Purchaser and in case they shall not agree or shall fail to make a valuation within one month after entering on the reference or after having been called upon to act by notice in writing from either of the parties hereto then by an umpire to be appointed for the purpose by the said valuers

(3) If either of the said valuers shall die or refuse to act or become incapable of acting in the reference before the completion of the valuation another valuer shall be appointed in his place by the party who originally appointed the valuer so dying refusing or becoming incapable as aforesaid and if the umpire so to be appointed shall die or refuse to act or become incapable of acting before completion of the valuation the valuers shall appoint another umpire in his place.

Purchaser to assume debts and liabilities.

3. The debts owing by and the other liabilities of the Vendor in connection with the said business as at the date of completion shall be assumed by the Purchaser and be allowed in reduction of the purchase money

Payment of purchase money by instalments.

(1) The sum of £—— part of the said purchase money having been already paid by the Purchaser to Messrs. —— the Vendor's solicitors as stakeholders the balance thereof (including the sum which shall be determined by valuation as aforesaid) shall be paid by the instalments and in the manner following that is to say one instalment of £—— on the date of completion on which day the purchase shall be completed a second instalment of £—— on the —— day of —— a third instalment of £—— on the —— day of —— and the last instalment (being the balance remaining due after payment of the said deposit and the said first three instalments) on the —— day of —— And the instalments for the time being remaining unpaid shall bear interest at the rate of £—— per cent. per annum as from the date of completion

(2) If any instalment or interest or any part thereof respectively shall be in arrear and unpaid after thirty days from any of the days hereinbefore appointed for payment thereof respectively then and in

that event the whole of the purchase money (including the said sum to be determined by valuation as aforesaid) or the instalments for the time being remaining unpaid shall immediately become payable with interest after the rate aforesaid up to the day of payment.

Completion and assignment.

4. (1) On payment of the first instalment of £—— payable on the date of completion the Vendor will execute a proper assignment of the said leasehold premises goodwill contracts and engagements and book debts to the Purchaser such assignment to be prepared by and at the expense of the Purchaser and the draft thereof to be delivered not less than fourteen days before the completion of the purchase for the approval of the Vendor's solicitors at their office at —— and the engrossment thereof for execution not less than seven days before the date of completion

(2) The said assignment shall contain (a) a covenant by the Purchaser to pay and discharge and to indemnify the Vendor against all the debts and liabilities of the said business which are to be borne by the Purchaser under this Agreement and to perform and indemnify the Vendor against the contracts and engagements hereby agreed to be purchased (b) a covenant by the Vendor that neither the Vendor nor his wife or widow will either alone or jointly or in partnership with any person or persons (whether as principals or as agents for any other persons) directly or indirectly carry on manage or be concerned engaged or interested in the business of a hotel or boarding-house keeper in the town of —— aforesaid for the space of seven years from the date of completion (c) an implied covenant by the Purchaser to pay perform and observe and to indemnify the Vendor against the rents and covenants of the said Lease under which the said leasehold premises are held. If required the Purchaser shall execute and deliver to the Vendor a duplicate of the said assignment to be prepared and stamped by and at the expense of the Purchaser.

Mortgage to secure unpaid instalments.

5. (1) The Purchaser shall make and execute to the Vendor a proper and valid charge by way of legal mortgage of the said leasehold premises including a mortgage of the said goodwill and the takings of the said business as a security for the payment of the instalments of the purchase money remaining unpaid and interest thereon payable at the rate and at the times hereinbefore mentioned respectively and also any money to become due under the covenant to indemnify the Vendor against the debts and liabilities of the said business to be contained in the assignment to the Purchaser such charge by way of legal mortgage to be executed immediately after the execution of the assignment of the said premises to the Purchaser and to be prepared by the Vendor at the expense of the Purchaser and to contain such powers and provisions and to be in such form as the Vendor shall reasonably require

(2) So long as any principal money or interest remains due under the said charge by way of legal mortgage the Vendor shall retain possession of the assignment to the Purchaser.

Possession and apportionment of outgoings.

6. (1) The possession of the said leasehold premises with full liberty to use and enjoy the said fixtures furniture and chattels in the same manner as heretofore shall be retained and all rates (including any rates made but not demanded prior to the date of completion) taxes and outgoings payable for or in respect of the said

leasehold premises and all debts liabilities and expenses of the said business shall be paid by the Vendor up to the date of completion and as from that date the possession shall be taken by the Purchaser who shall thenceforth pay all such rates taxes outgoings debts liabilities and expenses and the profits shall belong to the Purchaser

(2) For the purpose of the preceding sub-clause hereof the outgoings shall be apportioned and all instalments of War Damage contribution in respect of the said leasehold premises payable [before or] after the date of completion shall (subject to the deduction of any statutory indemnity to be given in respect thereof the benefit of which indemnity shall likewise be apportioned) be deemed to be outgoings (*b*).

(3) The property hereby agreed to be sold shall be at the risk of the Purchaser as to loss or damage by fire accident or otherwise arising after the sale but subject to the consent of the insurance office on payment by the Purchaser on completion of a proportionate part of the premiums for the unexpired term of the existing policy the Vendor will hold such policy (but not any policy under the Private Chattels Scheme in respect of War Damage) in trust for the Purchaser but the Vendor shall not be bound to keep up or renew any such policy. Provision as to insurance.

7. The Lease under which the said leasehold premises are held or a copy thereof having been already produced to the Purchaser's solicitors the Purchaser shall be deemed to purchase with full knowledge of the contents thereof whether of a usual character or not and of the state of the said premises as to repairs insurance party walls and all other matters and shall take the said premises as they are. Production o lease.

8. The Vendor shall (if required) within fourteen days from the date hereof deliver or send by post to the Purchaser or his solicitor an abstract of his title to the said leasehold premises commencing with the said Lease. Delivery of abstract.

9. The Purchaser shall admit the identity of the leasehold property purchased with that comprised in the muniments upon the evidence afforded by a comparison of the descriptions in the muniments and plans thereto (if any) and a statutory declaration to be made if required at the Purchaser's expense that the said premises have been enjoyed according to the title shown from the date of the said Lease. Identity.

10. The receipt for the last rent accrued due previously to the date of completion in respect of the said leasehold premises shall be accepted as conclusive evidence of the performance and observance of all the covenants and conditions in the said Lease or of the effectual waiver of any breach (whether continuing or not) or of any covenant or condition up to the said date without proof being required of the title or authority of the person giving such receipt. Evidence of performance of covenants

11. Within twenty-one days after the delivery of the abstract the Purchaser shall furnish to the Vendor's solicitors a statement in writing of his objections and requisitions (if any) arising on the abstract or this agreement and within fourteen days after the delivery Requisitions

(*b*) The purchaser cannot be given the benefit of any policy on the chattels under the War Damage Business Scheme without the consent of the Board of Trade, which might not be obtainable. The premiums on any such policy should therefore not be apportioned (see War Damage Act, 1943, s. 98).

of the Vendor's replies thereto the Purchaser shall furnish to the Vendor's solicitors a statement in writing of his further objections or requisitions (if any) arising on such replies and every objection or requisition not so stated shall be deemed to be waived. For the purpose of this condition an abstract shall be deemed perfect if it supplies the information suggesting the objection or requisition although otherwise defective. If no objection or requisition is so stated the title shall be considered as accepted and in these respects time shall be deemed of the essence of the contract.

Identity. 12. The property is believed and shall be taken to be correctly described as to quantity and otherwise and is sold subject to all chief quit and other rents and outgoings and to all incidents of tenure rights of way and other rights and easements (if any) affecting the same and if any error misstatement or omission shall be discovered in this agreement the same shall not annul the sale nor shall any compensation be allowed by the Vendor in respect thereof.

Rescission clause. 13. If the Purchaser shall make and insist on any objection or requisition either as to title conveyance or any matter appearing on this agreement or abstract or otherwise (not being necessary for the enforcement of any right under either section 42 or section 125 of the Law of Property Act 1925) which the Vendor shall be unable or on the ground of difficulty delay or expense or on any other reasonable ground unwilling to remove or comply with the Vendor shall (notwithstanding any previous negotiation or litigation) be at liberty on giving to the Purchaser not less than ten days' notice in writing to rescind this agreement in which case (unless the objection or requisition shall have been in the meantime withdrawn) this agreement shall at the expiration of the notice be rescinded the Purchaser being in that event entitled to a return of the deposit but without costs or compensation.

As WITNESS *etc.*

II.

Assignment of Leasehold Unlicensed Hotel or Boarding-house Pursuant to Agreement for Sale in preceding Precedent.

Parties. THIS ASSIGNMENT is made the —— day of —— 19— BETWEEN A of *etc.* (hereinafter called the Vendor) of the one part and B of *etc.* (hereinafter called the Purchaser) of the other part

Recitals: title to lease and goodwill; WHEREAS :—

(1) The Vendor has for upwards of — years carried on a private hotel or boarding-house on the messuage or tenement situate at —— in the County of —— and known as —— which premises are now vested in the Vendor as estate owner for the residue of a term of —— years from the —— day of —— 19— limited out of the fee simple granted by a Lease dated *etc.*

title to fixtures and chattels; (2) The Vendor is entitled to the tenant's fixtures in or upon the said premises and to the furniture and other chattels transferable by delivery which are now in or upon the said premises and in use in connection with the said business and also to the pending contracts and engagements and book debts of such business

(3) The Vendor has agreed with the Purchaser for the sale and transfer to him of the said leasehold premises and the goodwill of the said business including the benefit of the said pending contracts and engagements and book debts together with the said tenant's fixtures for the sum of £——

agreement for sale.

(4) The Vendor has also agreed with the Purchaser for the sale to him of the said furniture and chattels for the sum of £——

(5) It has been agreed that the said purchase money of £—— should be payable as follows that is to say as to £—— part thereof on or before the execution of these presents and as to the balance by the instalments and on the dates hereinafter mentioned with interest on the principal sum for the time being unpaid at the rate of £—— per cent. per annum

(6) The Vendor and the Purchaser have agreed to enter into the covenants on their part respectively hereinafter contained.

NOW THIS DEED WITNESSETH as follows:—

1. In pursuance of the said agreement and in consideration of the sum of £—— (part of the said sum of £——) [*the purchase money for the leaseholds goodwill book debts and tenant's fixtures*] on or before the execution of these presents paid by the Purchaser to the Vendor (the receipt and payment whereof the Vendor hereby acknowledges) and of the covenant for payment of the residue of the said sum and the other covenants on the part of the Purchaser hereinafter contained the Vendor AS BENEFICIAL OWNER hereby assigns unto the Purchaser FIRST ALL AND SINGULAR the premises comprised in and demised by the said Lease SECONDLY the said tenant's fixtures which are now in or upon the said leasehold premises and in use in connection with the said business THIRDLY ALL THAT the goodwill interest and connection of the Vendor of in and concerning the said business of a private hotel or boarding-house carried on upon the said leasehold premises FOURTHLY the benefit of all pending contracts and engagements relating to and the book debts owing to the Vendor in respect of the said business TOGETHER with power for the Purchaser or his successors in title at his or their own costs in the name or names and as the attorney or attorneys of the Vendor or his successors in title or otherwise to enforce rescind or vary such contracts and engagements and to demand sue for recover and receive and give effectual receipts and discharges for any money payable thereunder or damages for breach thereof respectively and the said book debts and for any of such purposes to appoint a substitute or substitutes the Vendor and his successors in title being kept indemnified by the Purchaser or his successors in title from all costs and expenses occasioned by such use of his or their name or names TO HOLD the same unto the Purchaser AS to the said leasehold premises for the residue of the said term of —— years created by the said Lease subject to the payment of the rent thereby reserved and to the performance and observance of the covenants on the part of the lessee and conditions therein contained AND AS to the said tenant's fixtures goodwill contracts and engagements and book debts absolutely.

Assignment of lease, fixtures, goodwill and contracts.

Habendum.

Covenants by purchaser: (1) to pay balance of purchase money;

2. The Purchaser hereby covenants with the Vendor as follows:—

(1) That the Purchaser or his successors in title will pay to the

Vendor the sum of £—— being the balance remaining unpaid of the said purchase money in manner following that is to say an instalment of £—— on the —— day of —— an instalment of £—— on the —— day of —— and the last instalment (being the balance remaining due after payment of the said instalments and the said sum of £—— paid on or before the execution of these presents) on the —— day of —— Together with interest on the principal sum for the time being unpaid at the rate of £—— per cent. per annum as from the —— day of —— [the date fixed for completion by the contract] PROVIDED that if any instalments or interest or any part thereof respectively shall be in arrear and unpaid after thirty days from any of the days hereinbefore appointed for payment thereof respectively then in that event the whole of the instalments of the said purchase money for the time being remaining unpaid shall immediately become payable with interest after the rate aforesaid up to the date of payment

(2) to indemnify against contracts.

(2) That the Purchaser his executors or administrators will pay discharge and perform and at all times keep the Vendor and his executors or administrators indemnified against the debts and liabilities of the Vendor in respect of the said business as from —— the —— day of —— and the contracts and engagements the benefit whereof is hereinbefore assigned and against all proceedings costs damages claims and demands and liability by reason of the non-payment of the said debts and liabilities and non-performance of the said contracts and engagements respectively.

Covenant by Vendor not to compete.

3. The Vendor hereby covenants with the Purchaser that the Vendor will not nor will the wife or widow of the Vendor either alone or jointly or in partnership with any person or persons (whether as principals or as agents for any other person) directly or indirectly during the term of seven years from the date hereof carry on manage or be concerned engaged or interested in the business of a hotel or boarding-house keeper in the town of —— aforesaid.

[4. *Declaration as to value if required.*]

[5. *Acknowledgment of right to production of documents.*]

IN WITNESS *etc.*

III.

Mortgage to Accompany Last Precedent.

Parties.

THIS MORTGAGE made the —— day of —— BETWEEN A of *etc.* (hereinafter called "the Borrower" which expression shall where the context admits also include the persons deriving title under him or entitled to redeem this security) of the one part and B of *etc.* (hereinafter called "the Lender" which expression shall where the context admits also include the persons deriving title under him) of the other part

Recitals: assignment to Borrower;

WHEREAS :—

(1) These presents are supplemental to an assignment (hereinafter called the Principal Deed) dated the —— day of —— and made between the Lender of the one part and the Borrower of

the other part being an assignment whereby the premises comprised in a Lease dated *etc.* and the goodwill and other assets not passing by delivery of the business of a private hotel or boarding-house then carried on by the Lender on the said premises were in consideration of the sum of £—— payable by the instalments and with interest thereon as therein mentioned assigned to and are now vested in the Borrower as to the said leasehold premises for the unexpired residue of the term of —— years granted by the said Lease and as to the goodwill and other assets absolutely And the said assignment contained a covenant by the Borrower to pay discharge and perform and to keep the Lender his executors and administrators indemnified against the debts and liabilities of the said business as from the —— day of —— and the contracts and engagements relating thereto the benefit whereof was thereby assigned and against all proceedings costs damages claims and demands and liability by reason of the non-payment of the said debts and liabilities and the non-performance of the said contracts and engagements

balance of purchase money remaining due;

(2) The Borrower is indebted to the Lender in the sum of £—— being the aggregate of the balance remaining unpaid of the said purchase money and of the sum of £—— payable by the Borrower for the assets of the said business passing by delivery

agreement for mortgage.

(3) It was agreed that upon the execution of the Principal Deed the repayment of the said aggregate sum of £—— and also all money due or to become due from the Borrower to the Lender in respect of the said covenant of indemnity in the Principal Deed should be secured in manner hereinafter appearing.

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows:—

Covenant for payment of balance of purchase money and sums due under covenant of indemnity.

1. In pursuance of the said agreement and for the consideration aforesaid the Borrower hereby covenants with the Lender that the Borrower

(1) Will pay to the Lender the said sum of £—— by the instalments and in the manner following that is to say an instalment of £—— on the —— day of —— an instalment of £—— on the —— day of —— and the last instalment of £—— on the —— day of —— Together with interest on the principal sum for the time being unpaid at the rate of £—— per cent. per annum as from the —— day of —— PROVIDED that if any instalments or interest or any part thereof respectively shall be in arrear and unpaid after thirty days from any of the days hereinbefore appointed for payment thereof respectively then and in that event the whole of the instalments for the time being remaining unpaid shall immediately become payable with interest at the rate aforesaid up to the date of payment

(2) Will pay to the Lender on demand all money which may become payable under the hereinbefore recited covenant of indemnity in the Principal Deed with interest thereon until payment at the rate of £—— per cent. per annum.

Assignment of goodwill.

2. In further pursuance of the said agreement and for the consideration aforesaid the Borrower AS BENEFICIAL OWNER hereby assigns unto the Lender ALL THAT the goodwill interest and connection of the Borrower of in and concerning the said business of a hotel or boarding-house carried on by him upon the said leasehold premises

And all money which now is or may hereafter during the continuance of this security become due to the Borrower in connection with the said business TO HOLD the same unto the Lender absolutely subject to the proviso for redemption hereinafter contained.

Sub-demise of leaseholds.

3. In further pursuance of the said agreement and for the consideration aforesaid the Borrower AS BENEFICIAL OWNER demises unto the Lender ALL AND SINGULAR the premises comprised in and demised by the said Lease TO HOLD the same unto the Lender for the residue of the said term of —— years created by the said Lease (except the last day thereof) subject to the payment of the rent thereby reserved and to the performance and observance of the covenants on the part of the Lessee and the conditions therein contained

Proviso for redemption.

4. (1) If the Borrower shall pay to the Lender all moneys hereinbefore covenanted or required to be paid together with interest thereon in the manner in which the same are hereinbefore covenanted to be paid respectively then and in such case the Lender will forthwith execute or sign a receipt for the same in accordance with section one hundred and fifteen of the Law of Property Act 1925 or in lieu of such receipt (if the Borrower shall so require) execute at the cost of the Borrower a re-assignment of the premises hereby mortgaged or any of them or any part thereof unto the Borrower or as he shall direct

(2) The provisions of section 93 of the Law of Property Act 1925 shall not apply to this security.

Covenant by Borrower:

5. The Borrower hereby covenants with the Lender that the Borrower

to repair and insure;

(1) Will during the continuance of this security duly pay the rent reserved by and observe and perform the covenants on the part of the lessee and the conditions in the said Lease contained and will keep indemnified the Lender against such covenants and against all actions proceedings costs charges claims and demands in respect thereof and will in particular keep the said leasehold premises in good and substantial repair and insured against loss or damage by fire in accordance with the covenants in that behalf in the said Lease contained and will on demand produce to the Lender the policy or policies of such insurance and the receipt for every premium paid in respect thereof

to carry on business and produce books.

(2) Will carry on the said business in a proper and businesslike manner and will keep proper books of account containing full particulars of all sums due to or by the Borrower in relation to the said business and will at any time (if required) produce such books and all documents letters and papers relating thereto for the inspection of the Lender and permit the Lender or any person appointed by him to make copies of or extracts from the same or any of them.

Power of sale.

6. The statutory power of sale shall apply to this security but without any of the restrictions contained in section 103 of the Law of Property Act 1925 and such power of sale shall be exercisable by the Lender at any time after the execution of these presents in any of the following events namely:—

(1) If the Borrower shall become bankrupt or a receiving order

shall be made against him or if he shall enter into any arrangement or composition for the benefit of his creditors

(2) If the Borrower shall fail to observe or perform any of the covenants on the part of the lessee and the conditions in the said Lease contained

(3) If the Borrower shall fail to observe or perform any of the covenants and conditions (express or implied) on his part herein contained

(4) If the Borrower shall die or shall execute a bill of sale over any of his personal chattels or shall suffer any of his goods to be taken in execution or under a distress for rent or otherwise.

Restriction on powers of leasing.

7. None of the statutory or common law powers of leasing or letting or agreeing to lease or let shall be exercisable by the Borrower.

Charge of Lender's expenses.

8. All money properly paid and all costs charges and expenses properly incurred by the Lender hereunder shall on demand be repaid to the Lender by the Borrower with interest thereon from the time of the respective payments at the rate of £—— per cent. per annum and until repaid shall be a charge upon all the premises hereby mortgaged but such charge shall not affect or prejudice any other remedy or security which the Lender would but for such charge have.

IN WITNESS *etc.*

Form 24.

Deed of Covenant for Payment of a Weekly Sum for the Benefit of the Covenantor's Family, to save Income Tax and Surtax.

Parties.

THIS DEED OF COVENANT is made the —— day of —— BETWEEN A of *etc.* (hereinafter called the Covenantor) of the one part and C of *etc.* and D of *etc.* (hereinafter called the Trustees) of the other part.

Recital of desire to provide for children.

WHEREAS the Covenantor is desirous of providing for his family in manner following and has agreed to enter into the covenant for payment of a weekly sum on his part hereinafter contained.

NOW THIS DEED WITNESSETH and it is hereby agreed and declared as follows :—

Covenant to pay weekly sum.

1. In pursuance of the said desire and in consideration of his natural love and affection for his children E, F and G the Covenantor hereby covenants with the Trustees that he the Covenantor will for the period of seven years from the date hereof or the life of the Covenantor whichever shall be the shorter period pay to the Trustees the weekly sum of £—— such sum to commence from the date hereof and to accrue from day to day and to be paid on Saturday in each week the first payment (being an apportioned sum) to be paid on the Saturday next after the date hereof (*a*).

(*a*) The sum should be made payable weekly as the covenant will then attract *ad valorem* stamp duty on one weekly payment only. A weekly sum is deductible from the covenantor's income for income tax and surtax purposes under s. 27 (1) (b) of the Income Tax Act, 1918, and s. 38 (2) of the Finance Act, 1927. (See *Edie* v. *Inland Revenue Commissioners*, [1924] 2 K. B. 198.) In order that the sum should be a permissible deduction it must be payable for a period of over six years and there must be some constant element in the yearly payments; it may be that a covenant for payment of a fraction of the covenantor's income would be sufficient (see *D'Ambrunil* v. *Inland Revenue Commissioners*, [1940] 1 K. B., at p. 856); but in view of the doubt it is wise to provide for payment of a fixed sum.

Trust for payment to children and grandchildren.

2. The Trustees shall hold the said weekly sum UPON TRUST to pay and apply such sum as the same accrues to the persons and in manner following that is to say:—

(1) The Trustees shall during the period during which the said weekly sum shall be payable (hereinafter called the Trust Period) pay the same to the said E, F and G (who are hereinafter collectively and each of whom is severally referred to as the Beneficiaries and Beneficiary respectively) if they shall so long live in equal shares Provided that if any of the Beneficiaries shall die before the expiration of the Trust Period the Trustees shall pay the share (whether original or accrued) of the said weekly sum which was payable to such Beneficiary immediately prior to his death to the child or children of such Beneficiary so dying for the time being in existence and if more than one in equal shares. But if any of the Beneficiaries shall die during the Trust Period without leaving a child or children him or her surviving or if all the children of such Beneficiary who shall survive him or her shall die during the Trust Period then from and after the death of such Beneficiary or the death of the survivor of such children of a Beneficiary as the case may be the share (whether original or accrued) which was immediately prior to such event payable to such Beneficiary or his or her children as the case may be shall accrue and be added proportionately to the then subsisting shares of the other Beneficiaries or their children as the case may be and be payable or applicable in like manner as such subsisting shares

(2) If and so long as any [Beneficiary or] child of a Beneficiary to whom any share of the said annual sum is payable is an infant the Trustees shall pay the same to his or her parent or guardian (if any) or otherwise pay or apply the same for or towards his or her maintenance education or benefit without being liable to see to the application of any sums so paid (*b*)

(3) If there shall at any time during the Trust Period be no person in existence to whom the said annual sum is payable under the provisions hereinbefore contained the same shall during the residue of the Trust Period be payable to —— (*c*).

Trustees' indemnity.

3. The Trustees shall not be liable for any loss occasioned by their omission or neglect to enforce the covenant on the part of the Covenantor for payment of the said weekly sum unless required to enforce the same by some person or the guardian of some person beneficially interested under this deed who shall give such security for the costs of such proceedings as the Trustees may require.

Power to appoint new trustees.

4. The power of appointing a new Trustee or new Trustees hereof shall be vested in the Covenantor during his life.

IN WITNESS *etc.*

(*b*) The income must not be accumulated, otherwise in so far as it is undistributed it might be treated as the covenantor's surtaxable income under s. 39 of the Finance Act, 1938. If any of the covenantor's children are infants, their shares will, so long as they are infants and unmarried, be treated as his income for income tax purposes under s. 21 of the Finance Act, 1936. This is unavoidable; but the provision does not apply to grandchildren.

(*c*) This is necessary to prevent the covenantor having an "interest" in the income within s. 38 of the Finance Act, 1938.

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